Supreme Court, U.S.
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No. 94-

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1994

WINFORD KENT BISHOP,

Petitioner,

v.

STATE BAR OF GEORGIA,

Respondent.

For the Writ of *Certiorari* to
The Supreme Court of Georgia

Petition For Writ of *Certiorari* and Application to Defer Consideration

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56 pp

QUESTIONS PRESENTED

1. (*14th, 5th, 8th amendments, U.S. Const.*) Consistently with principles of procedural and substantive due process under the 14th amendment, in state supreme court "adversary proceedings of a quasi-criminal nature" (*In re Ruffalo*, 390 U.S. 544, 551 (1968)), may a lawyer be sentenced to a social and economic death penalty (total disbarment):

(a) *without actual knowledge* of the "Notice of Investigation", the "Notice of Discipline", or the disbarment (petitioner read about his own disbarment in a local newspaper two weeks after the court order, in the law office of a friend of 35 years, prior to a luncheon engagement)[1];

(b) *upon unsworn grievances* that petitioner had earlier answered completely at informal request of bar counsel[2];

(c) *upon the same transactions or occurrences* that the ex-client had raised in mandatory fee arbitration by a parallel state agency (created by the state supreme court) with the power to forfeit attorney fees for professional misconduct[3], *that petitioner had "won, won, won"*[4]; and does the acquittal of misconduct constitute issue-preclusion and double jeopardy under

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[1] Report, Special Master, June 7, 1993, par. 22-23, App. 20a. Cf., *United States v. James Daniel Good Real Prop.*, 126 L.E.2d 490 (1993).

[2] Transcript, Special Master's Hearing, May 20, 1993, p. 325, l. 1-5; contra: *Ex parte Burr*, 9 Wheat. 529, 532 (1824).

[3] Motion for Reconsideration received May 23, 1994 ("allowed filed" by order of June 6, 1994 [App. 35a]), p. 7, l. 16-20.

[4] T-331, App. 23a.

the 5th and 14th amendments;
(d) *without sworn evidence* ever adduced to support the charges[5] (and a former Assistant General Counsel of the State Bar gave an expert opinion that petitioner "performed properly in the circumstances")[6];
(e) *in secret proceedings* at which petitioner had no right to be present[7] at which no sworn evidence was proffered against petitioner[8] in violation of 6th amendment;
(f) *without a finding or conclusion that petitioner was morally unfit to practice law or guilty of any act of professional conduct*[9];
(g) *where organs of the state bar* (created and staffed by the state supreme court) found as fact that petitioner did not know of the proceeding and *ruled that*, while the letter of the rule was followed, *petitioner "was not afforded due process of law"*[10];

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[5] Master's Report, par. 5 (App. 13a); T-328-329.

[6] App. 122a.

[7] Brief of State Bar of Georgia (p. 6), filed Mar. 13, 1990, in Georgia Supreme Court, exhibit "B" to Respondent's Supplemental Brief, filed Jan. 3, 1994.

[8] T-59, l. 17-21. *In re Oliver*, 333 U.S. 257 (1967); *Withrow v. Larkin*, 421 U.S. 35 (1975),

[9] Cf. App. 30a with App. 5a.

[10] Report, Review Panel of State Disciplinary Board of State Bar of Georgia, August 25, 1993, p. 1 (App. 9a); Master's Report (App. 22a).

(h) *where* - after petitioner's *pro bono* counsel argued at oral argument before the state supreme court on November 16, 1993, that the bar service rules were constitutionally deficient - *the court determined to disbar but first to change the rules*[11], and then without notifying petitioner of impending rulemaking[12], went into legislative session, rescinded Old Rules pertaining to address-change notification procedure and Notice of Discipline procedure[13], wrote New Rules[14], applied the New Rules without saying so, *rendering incompetent or irrelevant petitioner's evidence* that he had given a post office box address to an assistant general counsel of the state bar from whom he had received correspondence at the box[15] and his residence address to the membership

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[11] Handwritten note upon an internal oral argument memorandum of the court filed in the court and found by petitioner on June 30, 1994 (App. 37a). A photocopy of the memorandum is attached to Exhibit "G" of petitioner's Application for Extension of Time to File Petition for Writ of Certiorari to the Supreme Court of the State of Georgia, No. A-53, filed July 25, 1994, denied July 29, 1994.

[12] Motion for Reconsideration, filed April 28, 1994, affidavit attached, par 4.

[13] Cf. Old Rules 1-207 (App. 63a) and 4-208.1 through 4-208.3 (App. 67a) with New Rules 1-207 (App. 71a) and 4-208.1 through 4-208.3 (App. 72a). *Contra: Motor Veh. Mfrs. Assn. v. State Farm Ins. Co.*, 463 U.S. 29 (1983).

[14] Ibid.

[15] T-5 (l. 4-14); T-7 (l. 22-24); T-9 (l. 9-18); Deft.'s Exh. No. 1 and 2.

coordinator[16], allegedly justifying a court finding of waiver of personal service of process and personal jurisdiction of the court[17];
(i) *upon charges that were vague and insufficient to give notice* of the ethical violations charged[18];
(j) *where any post office slips* that would have been produced by certified and registered mail and placed in the post office box petitioner shared with two other people for one year (and not "for years" as claimed in the Georgia order)[19] *would not have had space for the name of the sender* of the mailpiece[20]; and the special master believed him when he testified that he did

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[16] T-280 (l. 22-24); T-309 (l. 19-20); T-311 (l. 21-22); Deft. Exh. 19. Petitioner told Ms. Gayle Baker, Membership Coordinator of the State Bar of Georgia that he lived in Dawson County, Georgia. A letter addressed to "[petitioner], Dawson County, Georgia" would have been delivered to the farm at which petitioner was living whether by the post office (App. 125a) or the Dawson County Sheriff (App. 123a).

[17] The rules were amended to provide that use of a post office box constitutes a waiver of personal service. New Rules 1-207 (App. 71a) and 4-208.2(f) (App. 75a).

[18] Petitioner did not see the Notice of Investigation (App.46a) until March 9, 1993 [sic], when served by certified mail, return receipt requested (T-323 - 324). The State Bar claimed it used certified mail to make certain the notices were received by the petitioner this time (Response to Respondent's ... Extension of Time to Answer Notices of Investigation, filed April 29, 1993).

[19] Master's Report, par. 20 (App. 19a).

[20] T-151 (l 8-12); T-123 (l. 9-11); T-121.

not see any slips in his box[21];
(k) *where* during the pendency of the Notice of Discipline the lawyer appeared before the state supreme court in an unrelated case (which he won) and *received from the clerk docketing information therein at his post office box*[22];
(l) *where bar counsel* telephoned the post office for an explanation why the registered Notice of Discipline had been returned to the state bar[23], but *neglected to telephone petitioner* at a number which continued to be available to the state bar[24], or to inform the staff investigator of the box address or to direct him to go to the post office which served petitioner's old address for a change of address order[25], or to ask the sheriff of the county in which petitioner resided to make service of process upon him[26], or even to send him a letter by first class mail, and petitioner was all along willing to acknowledge service[27].

2. (*Question Fairly Included Within No. 1*) (*Congressional Expansion of Liberty*

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[21] T-330 (l. 19) (App. 23a); T-97.

[22] T-312-314.

23 T-64 (l. 2-9).

[24] T-344 (l. 5-14); T-303; Deft. Exh. 22 and 23.

[25] T-290 (l. 20) to T-291 (l. 3).

[26] Cf. Affidavit of Dawson County Sheriff with statement that the Fulton County Sheriff "does not do any investigating" (T-346).

[27] T-343.

under 14th (and 5th) amendment Due Process and Constriction of Personal Jurisdiction in State and Federal Courts to Actual Knowledge When Service by Mail is Utilized) Has the Congress, by virtue of the Acts of Aug. 2, 1982, P.L. 97-227 (96 Stat. 246), and Jan. 12, 1983, P.L. 97-462 (96 Stat. 2527), and the Supremacy Clause (Art. VI, Cl. 2, U.S. Const.) expanded the principle of "liberty" under the Due Process clauses of the 14th (and 5th) amendment, and constricted the principle of personal jurisdiction when it rejected the Supreme Court's 1982 proposed amendments to Federal Rule of Civil Procedure (FRCP) 4, pertaining to service of process by U.S. certified or registered mail, restricted delivery, and in lieu thereof (a) enacted in 1983 the California method of acknowledgment of service by first-class mail and (b) later permitted to go into full force and effect the Supreme Court's 1993 proposed amendments to FRCP 4, eliminating altogether service by mail in favor of a waiver of service provision; and therefore -

Does a state court have personal jurisdiction, consistent with 14th amendment due process, to terminate a person's property in a state law license and liberty to practice law *when* a state integrated bar association's *attempted service of process by certified and registered mail under state law has failed to impart actual knowledge* of quasi-criminal attorney disciplinary proceeding, and is such a decision void (see *Jaffee v. Federal Res. Bank of Chi.*, 100 F.R.D. 443, 445 (N.D.Ill. 1983) ("the specific return receipt requirement of Rule 4(c)(2)(C)(ii) makes it clear *actual* notice is demanded by the new service-by-mail provisions"; *Hannah v. Plumer*, 380 U.S. 460,463 (n.1) (1965) ("Actual notice is of course also the goal of

Rule4(d)(1)****)?

3. (*14th amendment Due Process and Equal Protection, 8th amendment*) Was petitioner deprived of liberty and property in violation of the 14th amendment in respect of such additional, fundamentally unfair procedures in the Georgia court as pertains to -

(a) *lack of standards* to guide Investigative Panel of State Disciplinary Board in determining whether to issue a Notice of Discipline, as opposed to a Formal Complaint (and does this absence also constitute a violation of the 8th amendment prohibition of cruel and unusual punishments);

(b) *abrupt departure from longstanding Georgia precedent* (e.g., *Strickland v. Willingham*, 17 S.E. 605 (1934) (disbarment process may only be served personally); *Roland v. Shelton*, 127 S.E.2d 497 (1962) (registered mail must be actually received by nonresident addressee); *Luxury Air Svc., Inc. v. Cessna Aircraft Co.*, 78 F.R.D. 410 (N.D.Ga. 1978) (Georgia does not permit service of original process by mail); *Jefferson Fire Ins. Co. v. Brackin*, 79 S.E. 467 (1913) (service void where defendant is no longer in county of "official" address)) without explanation; *Abba Gana v. Abba Gana*, 253 Ga. 340 (1983) (plaintiff must use strict due diligence to locate defendant before resorting to publication service); cf. *Congreso de Uniones Indus. v. NLRB*, 966 F.2d 36 (1st Cir. 1992) (Breyer, J.) (reasons must be given when departing from established precedent);

(c) *failure to consider factors in mitigation of punishment* (such as no previous grievance by ex-client or other attorney; *pro bono publico* service, etc.), also constituting cruel and unusual punishment under 8th amendment and denial of

Equal Protection under 14th amendment;
(d) *exploitative use of publicity* (T-339);
(e) *utilization of burden of proof less than beyond a reasonable doubt* as prescribed by bar rule (4-221(e)(2) cf.*In re Winship*, 397 U.S. 358 (1970));
(f) fact that at least two of four majority justices of Georgia court are or were members of bar committee that drafted Old Rules, one of whom was vice-chairperson[28], did not voluntarily recuse under *Limeco, Inc. v. Division of Lime*, 571 F.Supp. 710 (N.D.Miss. 1983), and the "writing judge" was not even a member of the court at time of oral argument[29]?

4. (*Art. I, Sec. 10, U.S. Const.*)
A. (*Bill of Attainder*) Did the Georgia court's purposeful action in connection with promulgating the New Rules constitute the enactment of a bill of attainder under the cited provision?

B. (*Ex Post Facto* law) Where the Georgia court does not say so but applies the New Rules retroactively, does such amount to imposition of an *ex post facto* law under the cited provisioni?

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[28] Justice Fletcher was then in the private practice of law and was vice-chairperson of the committee. Reconsideration motion, April 28, 1994, affidavit, par. He was also the justice that petitioner had a conversation with on Jan. 14, 1993, prior to petitioner's learning of the disbarment or proceedings (id.).

[29] A third justice (Thompson) was not a member of the court at the time of oral argument, yet he was assigned the task of w[illegible]ing the per curiam opinion. He delegated this task to Lisa Y. Smith, a law clerk. He authored the memorandum that added one paragraph to the draft opinion circulated by Ms. Smith. See App. and note .

5. (*8th amendment Cruel, Unusual Punishment, Excessive Fine*) Was it impermissibly disproportionate and a cruel and unusual punishment and an excessive fine to take away petitioner's livelihood, outstanding accounts receivable, work in progress, and to publicize these events for what might have been nothing more than a default or, if stretched, a mild criminal contempt, in violation of the 8th amendment (*Austin v. U.S.*, 113 S.Ct. 2801 (1993))?

6. (*14th amendment Equal Protection of the Laws*) Where Old Rule 4-208.2(c) called for, first, certified mail delivery (to a lawyer at no specific address, implying the correct address known to the sender) of the Notice of Discipline before any other form of service, and where service upon other respondent attorneys was initially attempted by certified mail, was it a deprivation of 14th amendment Equal Protection of the Laws for the state bar not to attempt first certified mail service of Notice of Discipline upon petitioner?

7. (*4th amendment Unreasonable Seizure of Liberty, Property*) Where the lawyer took reasonable steps to notify the state bar of his new address[30], did the Georgia court unreasonably seize his property and liberty in violation of the 4th amendment by entering the January 8, 1993 order and adhering to the seizure in its April 18, 1994 order, without giving him actual prior notice thereof?

8. (*5th amendment Double Jeopardy*)

A. Where the January 8, 1993 order of disbarment stated that "Service [of the Notice of Discipline] was perfected pursuant

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[30] Master's Report, par. 21 (App. 19).

to [Old] Rule 4-208.2(c) ....", the February 18, 1993 order remanded the case for a hearing "on the sole issue of whether [petitioner] was properly served" under the bar rules, and "temporarily vacated [the disbarment order] pending the foregoing", and where a U. S. district court interpreted these actions as to require a complete vacating of its order of February 24, 1994 (App. 45a), is not the order of April 18, 1994 barred under the 5th and 14th amendments?

B. Where petitioner would have been prohibited by Bar Rule from applying for discretionary reinstatement until January 8, 1996, under the first disbarment order, was it an impermissible extension of his punishment under the double jeopardy clause for the Georgia court to enter the April 18, 1994 disbarment order which in effect extends the minimum period of disbarment until April 18, 1997, so that he will be disbarred for more than a minimum period of three years?

9. (*6th amendment Speedy Trial*) Where an unsworn grievance is filed against petitioner in May, 1991 (39 months ago) and in July, 1991, for alleged acts as early as October 1, 1990 (46 months ago), which resulted in a first order of disbarment (19 months ago) on account of proceedings filed in the Georgia court in June, 1992 (26 months ago), and where on January 22, 1993, petitioner entreated the Georgia court to grant an immediate *de novo* hearing on the merits of the grievances, has not petitioner's right to a speedy trial been denied in contravention of the 6th amendment?

10. (*6th, 7th (and 14th) amendment Jury Trial*) Have not the Georgia proceedings deprived petitioner of his right to a jury

trial under the cited provisions?

11. (*5th (and 14th) amendment Public Taking*) Where a state bar pursues and the state supreme court enters a disbarment against an innocent lawyer in order to "test"[31] the constitutional validity of bar rules jointly produced by them, and the lawyer loses revenues, reputation, and identity, has there not been a taking of his property and liberty for a public purpose under the cited provisions requiring just and prompt compensation?

12. (*Sherman Act, Sec. 1, Anticompetitive Behavior*) Is a violation of 15 U.S.C. Sec. 1, a valid defense to disciplinary proceedings; that is to say, since lawyers have a substantial impact upon interstate commerce, where the president, general counsel, and other members of the State Bar of Georgia act as a trade organization (a) to protect its public image[32], (b) to improve its profitability[33], and (c) to keep the state legislature from removing the State Bar of Georgia from the aegis of the state supreme court and placing it under the legislature[34] and initiate disciplinary proceedings against a lawyer lacking in due process to accomplish those goals, may not the lawyer use this fact to procure a dismissal of the proceedings?

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[31] T-332, 336 (App.24a).

[32] Reconsideration, April 28, 1994, affidavit par. 7 (a), (e), (l), (m), (q).

[33] Id. Affidavit, April 28, 1994 par. 7 (h) (Elliott), (k) (Winborn), (t).

[34] Id. 7(q).

13. (*14th amendment Due Process, Administrative Law*) Consistently with procedural and substantive due process, once the Georgia court determined to suspend the adjudication of petitioner's case and to rescind the Old Rules and to promulgate the New Rules,
(a) was the court obligated to follow its own rules therefor (Rule 5-101) (*Morton v. Ruiz*, 415 U.S. 199 (1974);
(b) could the court ever effectively cease rulemaking in respect of petitioner's case;
(c) how would a reviewing court discern whether the April 18, 1994 order was rulemaking or adjudication;
(d) how would a reviewing court discern whether the state court was acting as an administrative agency, or as a judicial tribunal, and when in each role;
(e) where federal administrative law holds generally that an agency's legal decisions are to be respected by the federal courts, but the agency's policy decisions may be second-guessed by the courts, what standard of review should apply to the Georgia order?

14. The decision of the Supreme Court of Georgia is contrary to the following decisions of the Supreme Court of the United States: *In re Ruffalo*, 390 U.S. 544 (1968); *Robinson v. Hanrahan*, 409 U.S. 38 (1972), *reversing* 284 N.E.2d 646 (Ill. 1972); *Hess v. Pawloski*, 274 U.S. 352 (1927); *Wuchter v. Pizzuti*, 276 U.S. 13 (1928); *City of N.Y. v. New York, N.H. & H. R.Co.*, 344 U.S. 293 (1953).

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No. 94-

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1994

WINFORD KENT BISHOP,

Petitioner,

v.

STATE BAR OF GEORGIA,

Respondent.

Petition For Writ of *Certiorari* to The Supreme Court of Georgia

COMES NOW the petitioner and requests this Honorable Court to grant his petition for a writ of *certiorari* and respectfully shows the following:

OPINIONS BELOW

The opinion of the Supreme Court of Georgia (App. 5a) is reported officially in 264 Ga. (Adv. Sheets) 241 and unofficially at 442 S.E.2d (Adv. Sheets) 732. The opinion of the Review Panel of the State Disciplinary Board of the State Bar of Georgia (App. 9a) is unreported. The opinion of a Special Master (App. 11a)

appointed by the Georgia court (App. 28a, 29a) is unreported. The master's verbal findings (App. 23a) are unreported. The vacated opinion of the Georgia court (App. 30a) was unofficially reported at 93 Fulton County Daily Report (FCDR) (1993). The order and award of the arbitrators (App. 32a) is unreported, as is there ruling on reconsideration (App. 34a).

JURISDICTION

The Georgia court entered "a final judgment of disbarment" on April 18, 1994 (cf. App. 36a with App. 8a). A petition for rehearing was timely filed on April 28, 1994, and was denied by order entered on May 13, 1994 (App. 36a). On June 6, 1994, the court ruled that "the Second Motion for Reconsideration in this case, received on May 23, 1994, is hereby allowed filed" but "further ordered that upon consideration of such motion, it is ordered that it be hereby dismissed." (App. 35a). The jurisdiction of this Court is invoked under 28 U.S.C. Section 1257(a).

CONSTITUTIONAL PROVISIONS, STATUTES, REGULATIONS INVOLVED IN THIS CASE

The provisions of the U.S. Const. involved in this case are the following: Art. I, Sec. 10; amendments IV, V, VI, VII, VIII, XIV (App. 55a); and they were timely raised (App. 78a). The federal statute involved in this case is the following: 15 U.S.C. Section 1 (App. 61a); and it was timely raised (App. 83a). Other constitutional and statutory provisions are relevant in argument and are set forth in the Appendix. The Rules and Regulations for the Organization and Government of the State Bar of Georgia, 219 Ga. 873 (1964), as amended, involved in this case are numerous (App. 63a); and they were timely raised.

Analogous bar provisions from other

jurisdictions are included in the Appendix (App. 84a). Model rules of the American Bar Association are included (App. 115a), as is a rule of the U.S. Court of Appeals for the 11th Cir. (App. 117a).

STATEMENT OF THE CASE

A. Facts

Petitioner is actually innocent of any professional misconduct (Aff., James E. Spence, Jr., former Assistant General Counsel of the State Bar of Georgia, May 23, 1994 (App.121a). In 1991 petitioner won a fee arbitration against the bar complainant before an arbitration tribunal created by the State Bar of Georgia Committee on Fee Arbitration (App. 32a). This is a coordinate state agency (see *Guralnick v. Supreme Ct. N. J.*, 747 F.Supp. 1109 (D.N.J. 1990)). In the fee arbitration, complainants (an ex-client and his first/fourth [sic] lawyer) raised the same alleged acts of professional misconduct as in the subsequent, grudge, unsworn bar complaints (contra: *Ex parte Burr*, 9 Wheat. 529, 532 (1824)). The tribunal found that respondent's fees were "reasonable and appropriate" and he was "not required to return any monies to [the complainant]". Since Georgia law provides for forfeiture of an attorney's fee when the lawyer is guilty of misconduct (*Sweeney v. Athens Reg. Med. Ctr.*, 917 F.2d 1560 (11th Cir. 1990)), petitioner's victory is not only preclusive on the issue of misconduct (*Ashe v. Swenson*, 397 U.S. 436 (1970)), but it constitutes jeopardy for purposes of the 5h amendment protection against double jeopardy (cf. *Freer v. Dugger*, 935 F.2d 213, 218 (11th Cir. 1991)).

Petitioner was at all times amenable to process in Dawson County, Georgia where he resided throughout the disciplinary

proceedings (App. 123a, 125a); and he advised the Membership Coordinator of the State Bar of Georgia of his residence and address in Dawson County on October 4, 1991, prior to the issuance of the Notice of Investigation on January 3, 1992 (Transcript, May 20, 1993, 280-284; Deft. Exh. 19; Report, Special Master, June 7, 1993, Finding 21). Respondent obtained a promise in 1991 from an Assistant General Counsel of the State Bar that the latter would telephone him if any further action was to be taken on the unsworn, grudge grievances which respondent had answered in full upon the request of the bar (T-259, l. 14-15; Affidavit, January 22, 1993, par. 3). The bar counsel even wrote respondent at his post office box address in November, 1991 (Deft's Exh. 1, 2).

The testimony of the employees of the United States Postal Service was speculative, contradictory to sworn affidavits (cf. T-180 with Affidavit, February 4, 1993; cf. Finding 11 with Affidavit, June 8, 1993), inconsistent with the *USPS Domestic Mail Manual*, Exh. 151.151A which requires that mail containing address labels stating: "Address Correction Requested - Return Postage Guaranteed" be not forwarded but the new address be placed thereon and the mailpiece returned to the sender (T-138, 142, 148).

The Special Master stated that he believed the petitioner when he said he never saw any slips from the post office in the box he shared with two other people when the Bar was mailing notices to him (T-330, l. 19-25). Moreover, the slips themselves did not contain a blank for inserting the name of the sender (T-151, l. 8-12; T-123, l. 9-11; T-121). The master also believed petitioner when he said that his victory in

the fee arbitration caused him to believe the grievance matter was "dead and gone and over with" (T-98; T-331 (l. 7-9)); there is testimony from another attorney in the record that no one ever informed him that a grievance against him was "dead docketed" but he had heard nothing in over two and a half years (Motion for Reconsideration, Apr. 28, 1994, exhibit: Transcript, *In re Robinson*, p. 60 (l. 23) to p. 61 (l. 13)).

The State Bar did not comply with Old Rule 4-208.2 pertaining to service of the Notice of Discipline because it did not attempt certified mail or personal service by a designee of the Chairperson of the Investigative Panel. The presumptions of the old rule (e.g., that a sheriff [of no specific county]'s *non est inventus* return was proof that service could not be perfected by certified mail or personal service by a designee of the Investigative Panel) are void for impermissibly shifting the burden of proof away from the state bar under the bar rules and placing same on petitioner. *Ulster Co. Ct. v. Allen*, 442 U.S. 140, 156-160 (1979); *Sandstrom v. Montana*, 442 U.S. 510 (1979). Petitioner argued their unconstitutionality to the Special Master and the Review Panel, both of which expressed the opinion that petitioner had not been afforded due process of law (App. 9, 21).

The Georgia court, rather than find that the old rule was unconstitutional or that it was not complied with, for the purpose of nailing petitioner (and constituting a bill of attainder under *Nixon v. Administrator, Gen. Svcs.*, 433 U.S. 425 (1977)) SUSPENDED THE ADJUDICATION OF PETITIONER'S CASE, convened as a legislative body, rescinded Old Rule 4-208.2, and promulgated New Rule 4-208.2 on March 11, 1994, and had it

published by Darby's *Georgia Advance Sheets* on April 14, 1994, which *inter alia* imposes new restriction on members of the bar that (a) use of a post office box constitutes a waiver of personal service of disciplinary proceedings and (b) notification of a new address to anyone but undesignated personnel of "the Membership Department", a new and undefined concept, is not effective. Then in the order on petitioner's case, filed April 18, 1994 (App. 5-8) the Georgia court did not explicitly apply either the Old Rule or the New Rule, but a general Due Process analysis. However, in doing so, the court *sub silentio* applied the two new provisions listed above and rendered irrelevant, incompetent, or immaterial respondent's notification to the Assistant General Counsel in 1991 of his new post office box address and to the Membership Coordinator in 1991 of his new residence address in Dawson County (*contra*, *The Miss. Bar v. Attorney G*, 630 So.2d 348 (Miss. 1994)), constituting an *ex post facto* law under *Calder v. Bull*, 3 U.S. (3 Dall.) 386, 1 L.Ed. 648, 650 (1798) (as a fourth example, the court said: "Every law that alters the legal rules of evidence, and receives less, or different, testimony than the law required at the commission of the offense, in order to convict the offender").

In obtaining copies of misplaced documents from the Georgia court file on June 30, 1994, petitioner found as a regular part of the file (and had photocopies made by a court employee) of internal memoranda (attached to his Application, No. A-53, filed July 25, 1994; App.), indicating that the court, after oral argument on November 16, 1993, determined to disbar but to withhold any opinion until Old Rule 4-208.2 could be amended to permit that result. This gives rise to respondent's claim that

the rescission of Old Rule 4-208.2 and promulgation of New Rule 4-208.2 constitute a bill of attainder and an *ex post facto* law.

B. Proceedings Below

On January 20, 1993, while waiting to go to lunch with a partner of an Atlanta law firm whom he had known for 35 years, respondent read in the *Fulton County Daily Report* that he had been disbarred by the Georgia court on January 8, 1993. mmediately contacting the general counsel of the state bar, respondent learned that a Notice of Discipline (a discipli-nary procedure promulgated in 1991) had been filed in the court on June 1, 1992, but had not been personally served on him. Further inquiry disclosed that two unsworn grievances were attached to the notice of discipline and filed with the court. Those grievances turned out to the two he had answered in detail in 1991 at the request of Assistant General Counsel Cohen. The grievances raised identical issues to those resolved in respondent's favor in the fee arbitration a year and a half before.

Respondent promptly filed a motion to vacate the January 8, 1993 order and remand for a *de novo* hearing before the State Disciplinary Board on January 22, 1993, with affidavits and documentary evidence, later amended. The bar opposed the motion.

In an order of February 18, 1993, the Georgia court remanded the case to the Review Panel of the State Discipli-nary Board and appointed a Special Master to conduct a hearing within 60 days "on the sole issue of whether respondent had been properly served" under Bar Rules 4-204.2 and [Old] Rule 4-208.2(c), as interpreted by the

master. The order "temporarily vacated" the disbarment order "pending the foregoing proceedings". The Review Panel was directed to expedite its review.

Special Master James R. Fortune, Jr., of Spaulding Co., Ga. held a hearing on May 20, 1993, that was transcribed. He entered findings of fact, conclusions of law, and a recom-mendation that petitioner's disbarment be set aside and he be allowed to address the charges against him, on June 7, 1993. The Review Panel adopted same and concurred in the recommendation in a report dated Aug. 25, 1993.

The case was refiled in the Georgia Supreme Court on Sept. 3, 1993. Oral argument was held Nov. 16, 1993. On Feb. 28, 1994, Chief Justice Clarke who had presided at oral argument retired. Justice Thompson replaced him in March, 1994. While the case was pending, the Georgia court rescinded the Old Rules and enacted New Rules to replace the Old Rules and directed the State Bar to publish them to coincide with publica- tion of petitioner's disbarment order on Apr. 18, 1994, in which Justice Thompson's vote was necessary to break a 3 to 3 tie. Petitioner filed a motion for reconsideration on Apr. 28, 1994, raising issues of ex post facto law and bill of attainder and other constitutional issues. The court denied the motion on May 13, 1994, holding that the Apr. 18 order was a final judgment of disbarment. Petitioner filed a second motion for reconsideration on May 23, 1994, raising the court's non-consideration of mitigating factors. The court allowed the filing, but dismissed the motion in an order of June 6, 1994. Petitioner subsequently filed a combined motion for a writ of *habeas corpus*, a motion for reconsideration of the

June 6, 1994 order, both on June 16, 1994, a motion for a writ of error *coram nobis* on June 27, 1994, and a first amendment thereto attaching thereto the internal memoranda of the court discovered in the file on July 1, 1994. There has been no order entered on any of said filings to petitioner's knowledge.

REASONS FOR GRANTING *CERTIORARI*

I. The Georgia case conflicts with (a) legislative decisions of Congress in 1982-1983 and 1993 in abolishing service of process by mail in federal district courts and in expanding the concept of individual liberty under the Due Process clauses of the 5th and 14th amendments by constricting the personal jurisdic-tion of federal courts and state courts under the Supremacy Clause to receipt of actual notice when service by mail is utilized and (b) modified public policy.

A. Introduction

The U.S. Const., Art. III, Sec. 1, establishes "one supreme Court" but assigns to Congress the power to "ordain and establish" "inferior Courts". The U.S. district courts (and the courts of appeals) are such courts. The Necessary and Proper Clause of Art. I, Sec. 8, cl. 18, gives to Congress the power to regulate the practice and procedure in the inferior federal courts. Congress enacted the Rules Enabling Act, 28 U.S.C. Sec. 2072, to delegate to the Supreme Court *inter alia* the drafting of civil practice rules for the district courts. However, the delegation is conditional: while the Supreme Court proposes rules, the Congress may intervene to prevent the proposed rules from going into effect. *Burlington N.R.R. Co. v. Woods*, 480 U.S. 967 (1987).

In practice an Advisory Committee on Civil Rules of the Judicial Conference of the U.S. drafts the proposed rules, another committee of the Conference (the Committee on Rules of Practice and Procedure) reviews them, the Conference itself passes upon and submits them to the Supreme Court. The latter then cursorily looks over and

transmit them to Congress. *In re Amendments to FRCP*, April 22, 1993, statement of Justice WHITE ("the Court's role *** is to transmit the Judicial Conference's recommendations without change and without careful study ***)." 113 S.Ct. 577, 579.

In 1982 the Supreme Court submitted to Congress proposed amendments to FRCP 4(d) permitting service of process by U. S. certified and registered mail, restricted delivery, BUT ONLY in accordance with the rule (FRCP 4(d)(7) ("except that a summons and complaint by mail may be served only as authorized by and pursuant to the procedures set forth in paragraph (8) of this subdivision [d] of this rule") (93 F.R.D. 255, 256).

> Proposed Rule 4(d)(8) provided in part:
> "(d) Summons and Complaint: Personal Service and Service by Mail. *** (8) Service *** may be made by the plaintiff or by any person *** by registered or certified mail, return receipt requested and delivery restricted to the addressee. Service pursuant to this paragraph shall not be the basis for the entry of a default or a judgment by default unless the record contains a return receipt showing acceptance by the defendant or a returned envelope showing refusal of the process by the defendant. If delivery of the process is refused, the person serving the process, promptly upon the receipt of the notice of such refusal, shall mail to the defendant by first class mail a copy of the summons and complaint and a notice that despite such refusal the case will proceed and that judgment by default will be rendered against him unless he appears to defend the suit. Any such default or judgment by defendant shall be set aside pursuant

to Rule 55(c) or Rule 60(b) if the defendant demonstrates to the court that the return receipt was signed or delivery was refused by an unauthorized person" (93 F.R.D. 255, 256-257).

Congress first delayed the effective date of the amendment (Act, Aug. 2, 1982, P.L. 97-227 (96 Stat. 246)) and then rejected it (Act, Jan. 12, 1983, P.L. 97-462 (96 Stat. 2527)). "The [House] Committee [on the Judiciary] received numerous complaints that the *** changes saddled litigators with flawed mail service *** ." 96 F.R.D. 117. Instead, Congress passed legis-lation based on House Bill 7154 that "provides a system of service by mail similar to the system now used in California." 96 F.R.D. at 119. Essentially, this provided for acknow-ledgment of service by a notice mailed by first class mail to the defendant. He was free to acknowledge or ignore, but if the latter, he could be made to pay the costs of personal service upon him. The 1983 amendments became effective in February 26, 1983 (96 F.R.D. 81).

B. Personal Jurisdiction; Service of Process; Notice; and Due Process of Law.

"[T]he only source of the personal jurisdiction requirement" in litigation is "the individual liberty interest protected by the Due Process of Law Clause of the Fourteenth Amendment" (4 Wright & Miller, *Federal Practice and Procedure, Civil 2d*, p. 292, citing *Insurance Co. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694 (1982)). The principle of personal jurisdiction is different from the technique of service of process.

"Strictly speaking Rule 4 does not deal directly with jurisdiction over the subject matter, jurisdiction over the

person, or venue. The federal rules were not designed to affect jurisdiction or venue and this is expressly stated in Rule 82. Indeed, it is doubtful whether the language of the Rules Enabling Act delegates sufficient authority to the Supreme Court to draft a federal rule touching upon these subjects."

4 Wright & Miller, *Federal Practice and Procedure, Civil 2d*, p. 225; see *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980) (maintenance of a suit must be both "reasonable" and based on minimum contacts); 101 *Harv. L. Rev.* 260 (1986).

The editors of the Harvard Law Review (which included a now-sitting justice) in "Developments in the Law, State-Court Jurisdiction", 73 *Harv. L. Rev.* 911, 987 (1960), observed that while "adequate notice is a prerequiste to jurisdiction" (citing to *Wuchter v. Pizzuti*, 276 U.S. 13 (1928)), *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950), was the first case to distinguish notice from personal jurisdiction. Respondent believes that the broad dicta in *Mullane* has been disaffirmed by the high court in *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791 (1983); cf. *Greene v. Lindsey*, 456 U.S. 444 (1982).

C. Application of Law to Fact.

In 1982 and 1983 Congress reined in the Judicial Conference of the U.S., not only to curtail acceptable techniques of service by mail, but to offer a politically acceptable definition of personal jurisdiction when service is made by mail (actual notice). The ultimate effect is to refine the meaning of the Due Process Clause of both the 5th and 14th amendments (see Justice SCALIA's definition in *Burnham v. Superior Ct. of Calif.*, 495 U.S. 604, 627

n.5 ("'Due process' (which is the constitutional text at issue here) does not mean that process which shifting majorities of this Court feel to be 'due'; but that process which American society - self-interested American society, which expresses its judgments in the laws of self-interested States - has traditionally considered 'due'"). The U.S. Department of Justice accepted the restrictions, although it had initially been in favor of the Supreme Court's 1982 proposal. 96 F.R.D. at 116-117.

A useful analogy is offered in federal interpleader practice (28 U.S.C. Sec. 1335). As the Court is aware, such has nationwide service of process provisions (28 U.S.C. Sec. 2361). However, if there is not a *res*, a defendant residing outside the judicial district of the federal district court is not bound personally, *New York Life Ins. Co. v. Dunlevy*, 241 U.S. 518 (1916). Note the instructive language of Judge Goodrich of the Ninth Circuit in *Hagan v. Central Ave. Dairy*, 180 F.2d 502, 503 (9th Cir. 1950):

> "We think the District Court of California did not have personal jurisdiction over the absent non-consenting Arizona corporation except to the extent of the corporation's interest in the escrow fund. That the court had jurisdiction that far is clear from the [federal interpleader] statute. Furthermore, *if Congress had so provided, we think there is no reason why process from the United States District Court could not run country-wide. But Congress has not so provided*, generally, and a District Court's power to hear and decide cases involving personal liability of an individual is limited to those served within the state where the court sits"

[emphasis added; note omitted].

Respondent's point is that if Congress can make process run country-wide, Congress can limit the effectiveness of process and personal jurisdiction when service is by mail, to actual notice. And "Actual notice is of course also the goal of Rule 4(d)(1) ****", *Hannah v. Plumer*, 380 U.S. 460, 463 (n.1) (1965). The resultant effect on Due Process is inescapable.

Congress' restriction on service of process by mail and on personal jurisdiction must be respected, and state court rules and decisions to the contrary must be struck down when they violate the principle. Besides the Supremacy Clause of Art. VI, Cl. 2, there are three good reasons for this:

(1) *Arrowsmith v. United Press Int'l*, 320 F.2d 219 (2nd Cir. *en banc* 1963), holds that federal courts in diversity cases must apply state statutes as to personal jurisdiction and cites to Hart & Wechsler, *Federal Courts* (1953), that "Rule 4(d)(3) of the Rules of Civil Procedure tells *how* service of process is to be made upon a [defendant] which is subject to service; but it does not tell *when* the [defendant] is so subject. [emphasis added]" *Arrowsmith*, which overruled an alternate holding in *Jaftex Corp. v. Randolph Mills, Inc.*, 282 F.2d 508 (2nd Cir. 1960), is settled consti-tutional law today.

(2) Undoubtably, the Georgia court's promulgation of a rule permitting valid service by mail without actual notice to the defendant will encourage federal plaintiffs in the Eleventh Circuit, and eventually throughout the country, to attempt service by mailing to stale, but "official", addresses, and this will lead to federal

litigation over the validity of personal jurisdiction upon hapless defendants. If sustained, the defendant's ignorance will result in revocation of licenses and deprivation of property and liberty without personal knowledge. *This result would be offensive to the members of Congress who first voted down the Supreme Court's proposed amendments in 1982 and then voted out the actual-notice mail provisions in 1983.*

(3) In federal judicial districts rejecting the Georgia practice, plaintiffs would not have this ability. Defendants there would be better off. This would suggest not only a lack of uniformity, but also an unequal protection of such plaintiffs in violtion of the 14th amendment.

These occurrences and discrepancies could have been precisely what Congress wanted to prevent when it rejected the 1982 proposed amendments to Rule 4.

II. The Georgia case conflicts with bar rules and laws of several jurisdictions, but may be read as consistent with model ABA rules and rules and statutes of some states, thus calling for resolution by the Court in this case.

A. Introduction.

In the Appendix is set forth verbatim provisions of bar rules and other statutes of numerous jurisdictions obtained from a brief filed on Sept. 23, 1993, in the Georgia court by the State Bar of Georgia. While not independently verified petitioner assumes that the cited rules/laws are currently in effect in the respective jurisdictions. Also included are model rules of the American Bar Association obtained from the same source and Addendum

Eight (Oct. 1992) of the rules of the U.S. Court of Appeals for the Eleventh Circuit.[35] Petitioner notes that the bar omits the law of 21 states. Petitioner briefly checked the law of one missing jurisdiction, South Carolina, and discovered a statute requiring actual personal delivery of disciplinary process upon a lawyer (*Code of Laws of S.C.*

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[35] Footnote 2 of the bar's Sept. 23, 1993 brief reads as follows: "See 'Survey of other Disciplinary Service Rules' appended hereto. The following jurisdictions adopt the ABA Model Rules and Eleventh Circuit Rule. (Service may be perfected by personal service or certified or registered mail to attorney's last known address of record). Delaware, Louisiana, Montana, Tennessee, Utah, Kansas, Nevada, and the District of Columbia. Other jurisdictions have adopted provisions similar to the ABA Model Rules with minor distinctions. The following states provide for service by personal or certified or registered, or regular mail. Iowa, Maine, Pennsylvania, Rhode Island, Texas, and New Mexico. The following states provide for service by certified or registered, or regular mail: Florida, Ohio, Arkansas, New Hampshire, and Virginia. The following states provide for service by certified mail to the last known address. If service is not perfected by certified mail, service may be perfected by publication: Idaho and Nebraska. The following state provides for personal service; in the event service is not perfected personally, service by publication or by regular mail may be made after application to the supreme court: Oregon. The following States require that service of a Complaint be made personally; however, if service cannot be made in this manner because the Respondent cannot be found, is evading service, and/or canno[t] be served after due diligence, service may be made by mail: Arizona, Hawaii, Illinois, New York, and Wisconsin. The following States require that service of a Complaint be made in accordance with the Civil Practice Act: Alabama, Minnesota, Mississippi, and West Virginia."

Sec. 40-5-520, App.). From this he infers that the other 20 omitted states also require personal service (otherwise, the state bar would have attached them). When that number (20 states) is added to the four states that permit service per civil practice acts and five states that require personal service unless being evaded, the number would be 30 states that require personal service. Thus, a majority of jurisdictions in the U.S. would require personal service, as at common law. *Strickland v. Willingham*, 17 S.E. 605 (Ga.App. 1934).

B. Misreading and Misapplication.

While the Georgia court does not mention these bar or model rules in its decision, the absence of any case citation suggests it was impressed by them in approving the law clerk's draft opinion. However, the court was misinformed into thinking that techniques for service of process, actually carried out, automatically translate into personal jurisdiction over a lawyer, as discussed above.

III. The Georgia case conflicts with a recent decision of the Mississippi Supreme Court in *The Miss. Bar. v. Attorney G*, 630 So.2d 348 (1994), that an amendment to bar rules to cover the case before the court would not be applied to the lawyer before the court.

A. Introduction.

In the cited case, the court perceived that the existing bar rules did not permit an expedited disciplinary proceeding to be employed where the lawyer was not convicted of a crime but admitted commission of facts warranting conviction. The court amended the rules, stated them in an appendix to the opinion, but declined the bar's request over

a dissent to apply the amended rules to the lawyer. The court implied that it would be unfair to apply them to the attorney and held that he would be entitled to an evidentiary hearing.

B. Retroactivity.

The application of a statute to preexisting facts involves fundamental fairness under the Due Process clause of the 14th Amendment. See C. Hochman, The Supreme Court and the Constitutionality of Retroactive Legislation, 73 *Harv. L. Rev.* 692, 697 (1960) ("The constitutionality ... is determined by three major factors, each of which must be weighed in any particular case. These factors are: the nature and strength of the public interest served by the statute, the extent to which the statute modifies or abrogates the asserted preenactment right, and the nature of the right which the statute alters.").

IV. The Georgia case conflicts with a recent decision of the West Virginia Supreme Court of Appeals, *Committee on Legal Ethics v. Boettner*, 394 S.E.2d 735 (1990), that "procedural due process" requires a hearing at which an attorney may establish factors in mitigation of punishment for bar infractions.

A. Introduction.

In the West Virginia case the lawyer had pleaded no contest to a crime. He was a public figure and had accomplished a lot for the state. He succeeded in persuading the court to consider mitigating factors even in light of a criminal conviction. See concurring opinion in *The Miss. Bar*, 630 So.2d 348, 350 ("Attorney G should certainly be afforded due process. This, however, can be accomplished by ... requesting a hearing concerning any possible mitigating

circumstances.")

B. Georgia procedure.

At the time of petitioner's disbarment, Georgia bar rules did not require the Georgia court to consider matters in mitigation in fixing punishment for disciplinary infractions. However, as a matter of practice, such factors were considered (e.g. *In re Carter*, 423 S.E.2d 897 (Ga. 1993); *In re Patterson*, 423 S.E.2d 248 (Ga. 1993); *In re Stubbs*, 380 S.E.2d 462 (Ga. 1989)). The Georgia court's amendment of the bar rules on March 11, 1994, made effective on Apr. 14, 1994, requires the Office of General Counsel to set forth in the Notice of Discipline such matters (see New Rule 4-208.2(a)(4). Since such application would benefit petitioner, on reconsideration he asked that said factors be considered in his case. This request was denied.

C. 8th Amendment.

A disbarment is an economic and social death penalty. This Court has held that in a physical death penalty case the 8th amendment requires the sentencer to consider matters in mitigation. *Mills v. Maryland*, 486 U.S. 367 (1988); *McKoy v. North Carolina*, 494 U.S. 433 (1990).

V. The Georgia case conflicts with some decisions of this Court that the practice of law under a law license conferred by a state is a liberty protected by the Due Process clause of the 14th Amendment, but the decisions of this Court are not consistent, and the Court should grant certiorari to clarify this area of law.

A. A Right

These cases indicate that a law license is a property and law practice a liberty: *Ex*

parte Garland, 71 U.S. (4 Wall.) 333, 377 (1867); *Bradley v. Fisher*, 80 U.S. (13 Wall.) 335, 354-355 (1871); *Ex Parte Wall*, 107 U.S. 265, 289 (1882); *Schware v. Board of Bar Exam.*, 353 U.S. 232, 239 (n. 5) (1957); *Konigsberg v. State Bar of Calif.* (I), 353 U.S. 252, 257-258 (1957); *Spevack v. Klein*, 385 U.S. 511, 516 (1967); *In re Ruffalo*, 390 U.S. 544 (1968) (implicit).

B. A Privilege.

These cases indicate they are a privilege: *In re Snyder*, 472 U.S. 634, 644 (1984), citing *People ex rel. Karlin v. Culkin*, 162 N.E. 487 (1928) (Cardozo, J.).

C. Georgia case law also shows Mix

Cf. *State of Georgia v. McMillan*, 319 S.E.2d 1 (1984); with *Gordon v. Clinkscales*, 114 S.E.2d 15 (1960).

VI. The Georgia case conflicts with a decision of the U.S. Court of Appeals for the Fifth Circuit, *In re Thalheim*, 853 F.2d 383 (5 Cir. 1988), that a lawyer may not be disciplined except upon an explicit finding that he is morally unfit for the practice of law.

A. Introduction.

The Georgia court disbarred petitioner either because he defaulted in not answering the Notice of Discipline, or because he was guilty of a criminal contempt of the court for not picking up post office slips giving notice that certified of registered mail was waiting at the post office for him (although not giving the name of the sender of the mail). There is no explicit finding that petitioner was guilty of an infraction of a disciplinary rule, or that he was otherwise guilty of professional misconduct. There is nothing about not picking up certified or registered mail that is unique to lawyers,

and others have not been penalized therefor when there was lack of actual notice.

B. ***Thalheim***.

By contrast, the Fifth Circuit court of appeals held that the district court had improperly suspended Thalheim when it had failed to enter a finding of fact that he was morally unfit to practice law in the district court.

C. **Application of law to fact**.

This Court needs to resolve this conflict because historically throughout this country disbarment was and is a badge of dishonor always reserved for egregious cases. Now the Georgia court wants to use this punishment for perceived contempts of court and defaults. Fundamental fairness under the Due Process clause should prevent said utilization of that punishment.

VII. The Georgia case conflicts with several decisions of this Court:

A. ***Robinson v. Hanrahan***, 409 U.S. 38 (1972).

This Court found a 14th amendment violation of due process for the Illinois prosecutor to give notice of a vehicle forfeiture (on account of the petitioner's commission of a simple theft) by sending notice thereof to the petitioner at the address he listed with the motor vehicle bureau, when the prosecutor knew he was actually in jail awaiting trial on the charges.

Similarly, the general counsel of the Georgia bar sent bar notices to petitioner's old address from which he had evicted after petitioner and a staff investigator advised bar counsel that petitioner was no longer at the address. Said counsel also knew

petitioner's new address, and the head of the bar membership department knew of petitioner's home address in Dawson County, Georgia.

The bar was obliged to send the notices to the new post office box address, and when unsuccessful, to send the notices to petitioner's home address in Dawson County. Ordinary Georgia law so holds. *Abba Gana v. Abba Gana*, 253 Ga. 340 (1983).

B. ***Hess v. Pawloski***, 274 U.S. 352 (1927).

Although an old decision, Hess has been cited recently with approbation by the Court. That portion of the case that petitioner relies on is an important dictum, to wit: "It is required that he [the putative defendant] shall actually receive [the piece of registered mail] and receipt for [that is, acknowledge, receive and/or sign the] notice of the service and a copy of the process", 274 U.S. at 356. Hess was the first case to approve the use of registered mail to obtain personal jurisdiction of nonresident motorists who injured residents while traveling in the forum state.

C. ***Hannah v. Plumer***, 380 U.S. 460 (1965); ***City of N.Y. v. New York, N.H.& H. R.Co.***, 344 U.S. 293 (1953).

These cases hold that actual notice is the object of service of process provisions in the federal rules and in federal bankruptcy law, respectively. Such service rules prevail in the first case over more cumbersome state service rules and in the second case are required even when a creditor has knowledge of ongoing bankruptcy proceedings, but is entitled to statutory notice.

VIII. The Questions Presented are Important.

A. Dispensing with Actual Knowledge will Breed Disrespect for Law.

There is an instinctive need to believe in the fairness of judicial proceedings (Note, 88 *Harv. L. Rev.* 1510, 1540 (1975)). That need is not met when a citizen can be deprived of liberty and property without actual knowledge of the proceedings until after they are concluded and the punishment is meted. Americans are on the move: they move every five years. While it is not unreasonable to require them to notify creditors and others of their new address, oversights will occur. To think that the punishment for an oversight will be the loss of one's livelihood and profession and social infamy, virtually an economic and social death penalty is unthinkable. This Court must act now to stem this impermissible intrusion into the individual liberty interest implicit in the Due Process clause of the 14th amendment.

B. There cannot be one Due Process for the Diversity Cases and Another Due Process for Federal Question Cases.

Today there is only one concept of Due Process of Law. It applies to the states under the 14th amendment. It applies to the federal government under the 5th amendment. Prior to the incorporation of the rights in the first eight amendments into the 14th amendment, it was appropriate to think of two notions of Due Process, with the defendant in the federal system more fully protected. This, however, is no longer true. As shown above, two concepts of Due Process would lead to lack of uniform practice in the district courts depending on whether the plaintiff utilized the federal methods of service or the Georgia service by

mail provision. While petitioner is not arguing that state service by mail provisions are invalid under the 14th amendment, he is saying that actual notice must result from the use of a state's mail service statute or court rule.

Petitioner believes that the proper analysis of what process he is due should be judged under *Mathews v. Eldridge*, 424 U.S. 319 (1976), rather than under *Medina v. Calif.*, 112 S.Ct. 2572 (1992). An analysis is found on pp. 49-50 of petitioner's Exhibit "G" to Application No. A-53, filed in this Court on July 25, 1994.

C. Quasi-Criminal Attorney Discipli-nary Proceedings should be Governed by the Criminal Law, and not the Civil Law.

Petitioner explicitly calls upon this Court to make lawyers the first-class citizens that Justice Douglas said they were 27 years ago (*Spevack v. Klein*, 385 U.S. 511, 516 (1967)). When faced with loss of livelihood, work in progress, accounts receivable, loss of status, social and economic death sentence, a lawyer is entitled to all the protect-ions of the criminal law. This would be the perfect case to employ these safe-guards, as they are necessary to protect an innocent lawyer of the consequences of at most negligence and at the worse the mildest form of criminal contempt, itself calling for the protections of the criminal law. It would be unthink-able for a criminal defendant to be tried in absentia. *Lewis v. United States*, 146 U.S. 370, 372 (1892) ("A leading principle that pervades the entire law of criminal process is that, after indictment found, nothing shall be done in the absence of the prisoner."); *Wade v. United States*, 441 F.2d 1046 (D.C. Cir. 1971); *Illinois v. Allen*, 397 U.S. 337, 338 (1970),

D. The Individual Petitioner

A 1961 honors graduate of Duke University and a 1966 graduate of Harvard Law School, petitioner has devoted his entire adulthood to the private practice of law (with time out for public service), once serving as an assistant law clerk to a judge on the 5th Circuit court of appeals and regularly engaging in *pro bono publico* activities[36]. No other client or opposing counsel has ever filed a grievance against him in Georgia or any other state[37] (he remains a member in good standing of the bar of another state and several federal courts).

Petitioner has represented private clients in cases against Georgia governmental units (*MPACA v. Life of Ga.,*) and against judges who are Georgia resident (*In re Georgia Paneling Co.*). Perhaps because of these cases or because he is a solo practitioner, he has become the object of a "test case" (App. 24a) of the State Bar of Georgia and the Supreme Court of Georgia (with at least two of the majority justices members of the committee that drafted the Old Rules that petitioner argued persuasively were unconstitutional). He needs this Court's protection (See *Wood v. Georgia*, 450 U.S. 261 (1981)).

E. Professionalism

This has been much discussion of professionalism in recent years. This is salutary. Contrast general notions of professionalism with the State Bar of Georgia's General Counsel's statement: "It [(Old) Rule 4-208.2] does not require phone

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[36] Reconsideration Motion, Apr. 28, 1994, affidavit par. 16, 17, 18, 19.

[37] Id. affidavit par. 2.

calls." State Bar of Georgia brief, p. 6, filed Sept. 23, 1993, in Georgia court. A telephone call by bar counsel at any time during a year's period would have avoided this entire imbroglio.

CONCLUSION

As shown above, the Georgia case conflicts with recent legislation of Congress, with about half of the service rules in bar disciplinary codes, decisions of the Mississippi and West Virginia supreme courts, the United States Court of Appeals for the Fifth Circuit, and this Court. Moreover, the Georgia case confuses the "how" (or technique) of service of process with the "when" (or amenability) of personal jurisdiction. Therefore, this Honorable Court should grant this petition for a writ of certiorari.

Respectfully submitted,

WINFORD KENT BISHOP

Supreme Court, U.S.
FILED

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No. 94-

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1994

WINFORD KENT BISHOP,

Petitioner,

v.

STATE BAR OF GEORGIA,

Respondent.

For Writ of *Certiorari* to
The Supreme Court of Georgia

Appendix to
Petition For Writ of *Certiorari*

WINFORD KENT BISHOP
Petitioner
Post Office Box 11813
Atlanta, Ga. 30355
706/265-6381

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I. OPINIONS TO BE REVIEWED ON CERTIORARI

In The Supreme Court of Georgia
Decided: Apr 18 1994

S93Y1886. In the matter of W. Kent Bishop

Per Curiam.

In 1991, two separate disciplinary proceedings were commenced against W. Kent Bishop. On January 3, 1992, the State Bar mailed two Notices of Investigation regarding these actions via certified mail to Bishop's address at 305 Buckhead Avenue. This address was the address of record with the State Bar. The post office subsequently, pursuant to a change of address notice which Bishop submitted six months earlier, forwarded the Notices of Investigation to Bishop's post office box (a box which Bishop had shared with his parents for years). The post office left two separate notices in Bishop's box regarding the certified mail on two different occasions - January 7, and again on January 13, 1992. After Bishop failed to retrieve the mail, the post office returned the Notices of Investigation to the State Bar.

On January 30, 1992, the State Bar learned via an investigator that Bishop had been evicted from his office at 305 Buckhead Avenue. The State Bar subsequently attempted personal service on Bishop at this address; however, on March 31, 1992, the Sheriff of Fulton County returned service *non est inventus*. On April 8, 1992, the State Bar mailed

service copies of the Notices of Investigation via registered mail to the same address; the post office subsequently returned the mail to the State Bar.

The Investigative Panel then met and voted to issue a Notice of Discipline requesting the disbarment of Bishop for the numerous instances of misconduct set forth in the Notices of Investigation. The Fulton County Sheriff attempted to serve the Notices at the 305 Buckhead Avenue address, however, service was unsuccessful.

On July 2, 1992, the State Bar sent the Notices of Discipline via registered mail to the 305 Buckhead Avenue address. The mail was, as previously, forwarded to Bishop's post office box, but subsequently returned to the State Bar "unclaimed." Pursuant to Bar Rule 4-208.1 et seq. (notice of discipline), the Investigative Panel recommended to this Court that Bishop be disbarred from the practice of law in Georgia. This Court ordered the disbarment.

Bishop, after learning of his disbarment in the Fulton County Daily Report, objected, arguing, *inter alia*, lack of service. This Court then appointed a Special Master to determine whether Bishop had been properly served.

At the hearing before the Special Master, two post office employees testified that notices for registered mail packages were customarily placed in patrons' mailboxes, and that such notice

was placed in Bishop's box on July 3, 1992. Additional testimony at the hearing indicated that Bishop had not claimed a registered mail package sent by an opposing counsel in a separate case. Also, supporting testimony indicated that Bishop did not know of the disciplinary proceedings or of his disbarment until he read it in the Fulton County Daily Report.

The Special Master found that the State Bar complied fully with the requirements of notice under Bar Rules [sic] 4-204.2. The Special Master, however, further found that Bishop did not have actual knowledge of the disciplinary proceedings against him or of his disbarment, and that he had not been afforded due process of law. The Special Master thus recommended that Bishop's disbarment be set aside and that he be allowed to address the underlying charges against him. The Review Panel agrees and moves this Court likewise.

After considering the record in this case, this Court does not adopt the recommendation of the Review Panel.

This Court finds that Bishop was properly served with the Notices and that he was afforded due process of law. Bishop was served at the address which he listed with the membership department of the State Bar. He failed to inform the State Bar of his new address, and thus the State Bar was authorized to rely on the address of record in the membership department.

The record reflects that at least six notices were placed in Bishop's post office box arising out of these disciplinary matters. Bishop admits that his post office box was his official address; that he checked the box at least three times a week; that he was aware that two grievances against him were under investigation; and, that he had received no notice that the grievances had been dismissed or resolved. These facts, together with the other evidence pertaining to Bishop's pattern of failing to claim registered mail, are sufficient to form the basis of a reasonable inference that Bishop knew the nature of the correspondence and deliberately ignored the notices. Under such circumstances, he must accept responsibility for the decision to ignore the mailings.

Consequently, we hereby order that Bishop is disbarred from the practice of law in Georgia, and is reminded of his duties under Bar Rule 4-219(c) to timely notify all clients of his inability to represent them, to take all actions necessary to protect the interest of his clients, and to certify to this Court that he has satisfied the requirements of such rule.

All the Justices concur, except Hunt, C.J., Sears-Collins and Carley, JJ, who dissent.

IN THE SUPREME COURT
STATE OF GEORGIA

DISCIPLINARY PROCEEDINGS

IN THE MATTER OF:

W. KENT BISHOP, Respondent

Supreme Court of Georgia Docket No. 1021
State Disciplinary Board Docket Nos.
2347 & 2348

REPORT OF THE REVIEW PANEL

COMES NOW the Review Panel of the State Disciplinary Board of the State Bar of Georgia and, pursuant to 4-203(b)(4), files this Report in the above-captioned matter.

The findings of fact of the Special Master are accepted and hereby approved in their entirety. The Review Panel hereby approves the Special Master's conclusions of law. We find, as did the Special Master, that Respondent was properly served with both the Notices of Investigation and the Notice of Discipline prusuant to Bar Rules 4-204.2 and 4-208.2, respectively. We also adopt the recommendation of the Special Master that Respondent was properly served pursuant to existing Bar Rules; however, Respondent has not been afforded due process of law and his disbarment should be set aside so that he may be allowed to address the charges against him. A copy of the Report of the Special Master is

included in the full record of this case which is filed herewith, and is incorporated by reference in this Report of the Review Panel.

The Review Panel also finds that Respondent Bishop filed several pleadings after the expiration of time set forth in Bar Rule 4-218(e). Subsequently, the State Bar of Georgia filed Motions to Strike the untimely filed matters. As these pleadings were not filed in accordance with Bar Rule 4-218(e), they were not considered by this Panel and are not part of the complete record in this case which is transmitted to the Supreme Court in accordance with Bar Rule 4-218(f). The Clerk of the State Disciplinary Board is directed to file the record in accordance with this Report.

This 25th day of August, 1993

/s/ Bryndis W. Roberts
Bryndis W. Roberts
Chairperson, Review Panel
State Disciplinary Board

IN THE SUPREME COURT
STATE OF GEORGIA

DISCIPLINARY PROCEEDINGS

IN THE MATTER OF:
W. KENT BISHOP, Respondent.

Supreme Court Docket No. 1021
State Disciplinary Board Docket
Nos. 2347 & 2348

REPORT OF THE SPECIAL MASTER

NOW COMES the Special Master, Mr. James R. Fortune, Jr., in the above-styled proceeding and files this Report pursuant to the provisions of Rules 4-210 and 4-217 of the Rules and Regulations of the State Bar of Georgia and shows the following:

Statement of the Case

This is a State Bar of Georgia disciplinary proceeding brought pursuant to the provisions of Part IV, Chapters 1 & 2 of the Rules and Regulations for the Organization and Government of the State Bar of Georgia.

On January 8, 1993, the Supreme Court of Georgia entered an Order disbarring Respondent from the practice of law. On January 23 [sic], 1993 Respondent filed a "Motion to Vacate and Remand for De Novo Proceedings" in the Supreme Court of Georgia. On February 18, 1993, the Supreme Court temporarily vacated its January 23 [sic], 1992 Order disbarring Respondent from the practice

of law and remanded the disciplinary proceeding to the undersigned Special Master to consider the "sole issue" of whether Respondent was "properly served."

The above-captioned matter was heard on May 20, 1993 and evidence was presented by both the State Bar of Georgia and Respondent on the sole issue of service.

Based upon the evidence adduced at the hearing, the undersigned Special Master makes the following findings of fact and conclusions on [sic] law on the sole issue of service.

FINDINGS OF FACT

1.

The Respondent herein is W. Kent Bishop (hereinafter "Respondent"). Respondent resides in Dawson County, Georgia. Respondent is licensed to practice law in the State of Georgia and has been a member of the State Bar of Georgia since 1971. Respondent is subject to the disciplinary jurisdiction of the Supreme Court of Georgia, the State Disciplinary Board of the State Bar of Georgia, and of a special master properly designated by the Supreme Court of Georgia.

2.

During all times pertinent to this proceeding, Respondent's official address as contained in the membership records of the State Bar of Georgia was listed as: 305 Buckhead Avenue, Atlanta, GA 30305.

3.

After receiving and screening two (2) grievances from the general public,

the Office of general [sic] Counsel referred the Grievances to the Investigative Panel of the State Disciplinary Board on January 3, 1992. Two (2) separate Notices of Investigation were signed by Paul B. Cohen, Assistant General Counsel, and were mailed via certified delivery to Respondent's address at 305 Buckhead Avenue. The Notices of Investigation were subsequently forwarded to Respondent's Post Office Box 11813, Atlanta, Georgia 30305. After two (2) notices were left for Respondent on January 7, 1992 and again on January 13, 1992, the packages were returned to the State Bar of Georgia "unclaimed."

4.

On or about January 30, 1992, Jeffrey R. Davis, Assistant General Counsel dispatched a staff investigator from the State Bar of Georgia to locate Respondent. The investigator went to 305 Buckhead Avenue and was told that Respondent had been evicted from his office.

5.

On or about March 31, 1992, the Sheriff of Fulton County returned service *non est inventus* relative to the service of the Notices of Investigation. On April 8, 1992, the State Bar of Georgia mailed via registered mail, service copies of the Notices of Investigation. The Registered mail package was returned to the State Bar of Georgia after the U.S. Postal Service attempted delivery.

6.

Following service of the Notices of Investigation, the Investigative Panel met and voted to issue a Notice of

Discipline requesting the disbarment of Respondent for his misconduct set forth in the Notices of Investigation. The Investigative Panel directed that the State Bar of Georgia file the Notice of Discipline in the Supreme Court of Georgia.

7.

The State Bar of Georgia filed a Notice of Discipline recommending disbarment against Respondent in the Supreme Court of Georgia charging him with violations of Standards 4, 21, 22, 23, 28, 30, 40, 45, 47, and 68 of Rule 4-102 of the Rules and Regulations for the Organization and Government of the State Bar of Georgia, 219 Ga. 873 (1964), as subsequently amended.

8.

Jeffrey R. Davis, Assistant General Counsel, State Bar of Georgia, testified that he directed the Sheriff of Fulton County to serve Respondent with a copy of the Notice of Discipline at his official address pursuant to the procedure set forth in Bar Rule 4-208.2 (Notice of Discipline: Contents; Service). Mr. Davis also testified that on June 8, 1992, the State Bar of Georgia of Georgia [sic] received an entry of service *non est inventus* from the Fulton County Sheriff's Department. A copy of the Sheriff's return is attached hereto as Exhibit "A". On July 1, 1992, the State Bar of Georgia sent the Notice of Discipline to Respondent via registered mail, R 495 607 966 as required by Bar Rule 4-208.2(c)(3). The registered mail package was returned to the State Bar of Georgia on August 5, 1992 marked "unclaimed." A copy of the Registered

Mail envelope containing the Notice of Discipline is attached hereto as Exhibit "B".

9.

Mr. Don Woods, Manager, United States Postal Service, Northside Carrier, testified that Respondent filed a change of address card with the Post Office on July 11, 1991 requesting that all of his mail be forwarded from 305 Buckhead Avenue, Atlanta, GA 30305 to his new address at P.O. Box 11813, Atlanta, GA 30355. The change of address card was admitted into evidence at the hearing. A copy of the change of address card is attached hereto as Exhibit "C".

10.

Mr. Woods testified that his carrier facility services 305 Buckhead Avenue. Mr. Woods testified that Postal Records indicated that Registered Mail package R 495 607 966 was delivered to his facility on July 2, 1992, one (1) day following the State Bar of Georgia's mailing of July 1, 1992. Mr. Woods stated that his carrier facility sent the Registered package to the airmail field for forwarding to P.O. Box 11813, Atlanta, GA 30355 located at Northside Finance Postal Unit on Pharr Road, Atlanta.

11.

Mr. Woods also testified that with respect to both the certified and registered mail, the "notice" slip which is affixed to the package and the end torn off and then placed in the patron's mailbox or post office box, was affixed not at his carrier facility which serves 305 Buckhead Avenue (30305) but rather was affixed at the retail office servicing zip code 30355, post office box

11814 [sic]. He testified that such was the case because his carrier facility, which services zip code 30305, at he [sic] time period in question was no longer using that color notices. Mr. Woods carrier facility (30305) used yellow notices for registered mail and carrier facility servicing zip code 30355 used pink notices. The notice left on Respondent's registered mail package was pink. Thus, Mr. Woods testified that the notice at issue in this case was not left in Respondent's mailbox at 305 Buckhead Avenue and was not handled whatsoever at 30305, but rather was handled at 30355, the retail facility servicing Respondent's post office box 11813.

12.

Mr. Woods also testified that based upon his examination of postal records, it would have been impossible for any notice to have been put in respondent's mailbox at 305 Buckhead Avenue since, according to postal records, the registered mail package of 495 607 966 was delivered to his facility on July 2, 1992 and was forwarded to the Northside Finance postal unit on Pharr Road, 30355, in the early morning hours following receipt by his carrier facility and that there was no delivery in that interim time period.

13.

Ms. Annie Smith, also of the United States Postal Service testified that the Registered Mail package was received by the Northside Finance Post Office on July 3, 1992 for delivery to Post Office Box 11813. Ms. Smith identified the Registered Mail Bill Dispatch kept in the ordinary course of business on July 3,

1992. Said dispatch bill was introduced into evidence and shows that Registered Mail package R 495 607 966 was received on July 3, 1992 for delivery to P.O. Box 11813. A copy of the dispatch bill is attached hereto as Exhibit "D".

14.

Ms. Annie Smith also testified about Postal Service protocol relative to notifying boxholders that Registered deliveries are being held for the addressee. Ms. Smith testified that it is standard procedure to make a record of each Registered package and to tear off the claim check for the package and place it in the Post Office box of the addressee. Ms. Smith testified that her records reflect that claim check No. 360530 was filled out and placed in P.O. Box 11813 on July 3, 1992. Postal records also reveal that Registered package R 495 607 966 was returned "unclaimed" to the State Bar of Georgia.

15.

Ms. Smith also testified that, indeed her post office was using pink colored notice forms attached on the registered or certified mail at issue in this case. In addition, she testified that she is certain that she placed notice of registered mail in respondent's post office box 11813 on or about July 3, 1992. She also testified that had the wind blown the notice out of the box, the notice would have been put back in the box.

16.

It is the finding of the Special Master that the State Bar of Georgia mailed the Notice of Discipline via Registered Mail to Respondent's official

address as contained in the membership records of the State Bar of Georgia: 305 Buckhead Avenue, Atlanta, GA 30355. The registered package containing the Notice of Discipline was forwarded on July 2, 1992 by the United States Postal Service to Respondent's P. O. Box 11813, Atlanta, GA 30355. It is also the finding of the Special Master that the Post Office followed official protocol relative to handling Registered Mail deliveries and there exists no evidence that the Post Office failed to place a claim check in Respondent's Post Office box. The evidence presented by the U.S. Postal employeres is uncontroverted. Therefore, the Special Master finds that Respondent was given notice of the registered package in his post office box on July 3, 1992 and Respondent failed to claim the delivery.

17.

At the hearing, Respondent testified that he has never received a registered mail delivery at P.O. Box 11813, nor at any other location in his professional career. Respondent also filed an affidavit in this matter on January 25, 1993 with the Supreme Court of Georgia wherein he swore that he had never received a registered mail delivery in his professional career. In both his testimony at the hearing and in the affidavit filed with the Supreme Court, Respondent stated unequivocally that he has checked his Post Office Box 11813 for contents at least every three (3) days since July 15, 1991. A copy of Respondent's affidavit is attached hereto as Exhibit "E".

- 18.

The State Bar of Georgia also called Mr. Frederick A. Johnson, an attorney formerly associated with the Atlanta law firm of Drew, Eckl, and Farnham. Mr. Johnson represented the Plaintiff in the matter of *305 Buckhead Ave. v. W. Kent Bishop*, a civil action filed against Respondent arising out of his eviction from his law office. Respondent proceeded *pro se* in the matter. Mr. Johnson testified that during the course of the litigation, he sent Respondent an abusive litigation letter via registered mail in December 1991. This registered letter was sent directly to Respondent's P.O. Box 11813. The letter was never claimed by Respondent and was ultimately returned to Mr. Johnson in late January 1992. Therefore, it is the finding of the Special Master that Respondent has been notified on other occasions of registered mail deliveries and, as in the case *sub judice*, failed to claim the deliveries. A copy of the Drew, Eckl, Farnham registered letter is attached hereto as Exhibit "F".

19.

From July 15, 1991, Respondent did not receive any mail at his previous address of 305 Buckhead Avenue. From the 15th of July, 1991, until the present, Respondent's only mailing address had been P.O. Box 11813, Atlanta, Georgia 30355.

20.

Post Office Box 11813, Atlanta, Georgia 30355 is a post office box which Respondent's parents, Mr. and Mrs. Winford R. Bishop, have had for many years. From July 15, 1991, to the

present, Respondent has shared this post office box with his parents.

21.

I find that Herman Scott, the Staff Investigator for the State Bar of Georgia, went to Respondent's old office located at 305 Buckhead Avenue on or about January 30, 1992, and from that date on the State Bar of Georgia knew that the Respondent was not located at the old address. I further find that Respondent made a reasonable effort to notify the State Bar of his change of address beginning in July and continuing through October 1991, and find that Respondent thought the State Bar had his new address.

22.

The Special Master received testimony from Mr. Vance Rankin, an attorney licensed to practice law in the State of Georgia. The Special Master finds the testimony of Vance Rankin to be convincing that the Respondent did not have actual knowledge of the disciplinary proceedings or his disbarment prior to reading of it in a newspaper on January 20, 1993.

23.

The Special Master has also read the deposition of Mr. Charles K. Howard, Jr., which was admitted into evidence during the Special Master hearing. The Special Master finds the testimony of Charles K. Howard, Jr. to be compelling evidence that the Respondent was totally unaware of his disbarment until January 20, 1993, when he read about his disbarment in a newspaper.

24.

The Office of the General Counsel

complied fully with the requirements of Bar Rules 4-204.2 to the extent that service of the Notices of Investigation was perfected pursuant to Bar Rule 4-204.2.

25.

The Special Master finds as fact that the Respondent, although properly served according to the State Bar of Georgia rules, nonetheless, never did receive actual notice of the Notice of Investigation nor of the Notice of Discipline.

CONCLUSIONS OF LAW

1.

The Office of the General Counsel complied fully with the requirements of Bar Rules 4-204.2 to the extent that service of the Notices of Investigation was perfected pursuant to Bar Rule 4-204.2.

2.

The Office of the General Counsel complied fully with the requirements of Bar Rules 4-208.2 to the extent that service of the Notice of Discipline was perfected pursuant to Bar Rule 4-208.2.

3.

Respondent failed to reject the Notice of Discipline within twenty-three (23) days of service as required by Bar Rule 4-208.3.

4.

Respondent did not have actual knowledge of the Notice of Investigation, Notice of Discipline or his disbarment until he read about his disbarment on January 20, 1993.

RECOMMENDATION

Although the Special Master was ordered by the Supreme Court to solely determine the issue of whether or not Respondent had been properly served under the State Bar Rules, and the Special Master has concluded as a matter of law that the State Bar did properly serve the Respondent according to the existing Bar Rules, nonetheless, the Special Master believes that the Respondent has not been afforded due process of law and it is the recommendation of the Special Master that the Respondent's disbarment be set aside and that the Respondent be allowed to address the charges against him in the aforementioned Grievances.

RESPECTFULLY SUBMITTED this 4 day of June, 1993

/s/ James R. Fortune, Jr.
James R. Fortune, Jr.
Special Master

P.O. Box 116
Griffin, GA 30224 [Exhibits omitted]

VERBAL FINDINGS OF FACT BY SPECIAL MASTER ON MAY 20, 1993, AS RECORDED IN TRANSCRIPT OF THAT DATE:

(1)

[THE SPECIAL MASTER:] However, I will also say that when Mr. Bishop tells me he did not have any knowledge of this proceedings, and that he didn't ever see any slips in those boxes, I'll be totally candid with you, I believe him. [T-330, l. 19-23]

(2)

[THE SPECIAL MASTER:] Mr. Bishop came in and vigorously opposed -- well, defended himself in the fee arbitration, won, won, won, won. I mean he certainly wasn't running from a fight he couldn't win because he won it. [T-331, l. 5-11]

(3)

[THE SPECIAL MASTER:] *** Assuming that the [Georgia Supreme Court] first got your 305 Buckhead highway [sic] address from the State Bar when they docketed the case on June 3 '92, and then subsequently to that the State Bar gets an address change, let's assume, October of '92, which gives them the correct P.O. Box, I'm just assuming there is no follow-up where the State Bar says we better let the Supreme Court know this fellow's got a new address. I mean I'm assuming that there probably is no follow-through there. Does that seem reasonable to both sides?
MR. GOLDSTUCKER: That's a fair

assumption.
MR. BISHOP: I think, however, that should have been done.
THE SPECIAL MASTER: We won't argue what should have been, Mr. Bishop. We've got to argue about what the rules are.
MR. BISHOP: Okay.
THE SPECIAL MASTER: I readily agree with you.
MR. BISHOP: Okay. My contention is is that they should have notified the Supreme Court of my correct address, and I got an order from the Supreme Court in November [1992].
THE SPECIAL MASTER: Sent to your P.O. Box?
MR. BISHOP: Sent to my P. O. Box. [T-317, l. 15 to T-318, l. 19]

TESTIMONY GIVEN AT MASTER'S HEARING ON MAY 20, 1993, AS TRANSCRIBED

(4)

[THE SPECIAL MASTER:] *** Mr. Bishop, are you of the opinion that the State Bar has got it in for you, that you have been intentionally mistreated or something?
MR. BISHOP: He said this is a test case.
THE SPECIAL MASTER: Who said I was a test case?
MR. BISHOP: Mr. Goldstucker.
THE SPECIAL MASTER: Well, I -- okay. Do you have any explanation to offer, Mr. Goldstucker, how -- [to other subject]. [T-331, l. 25 to T-332, l. 9]

MR. GOLDSTUCKER: *** I need to say that I did not tell Mr. Bishop this was going

to become a test case, that he was a test case. Mr. Bishop came in and some manner was suggesting maybe we could work this thing out, and we were talking about whether or not this overall scheme is constitutional or not. And my comment to Mr. Bishop was that the State Bar is willing to have this be a test and have it be determined by some higher authority as to whether or not this format is constitutional or not and because the State Bar needs to know. *** " [T-336, l. 10-21]

(5)

BY MR. BISHOP:
Q. But there was a period of time on July the 2nd [1992] right after the [registered Notice of Discipline] mail was received that the claim check could have been put with the letter carrier and delivered at 305 Buckhead Avenue, which is only a half a mile away from the post office box?
A. [BY W. DON WOODS, USPS EMPLOYEE] It's possible on some of the certifieds [Notices of Investigation] because I don't have any -- it shows that it was returned unclaimed.
Q. All right. So the certifieds, the claim checks' pink slips, could have been left at 305 Buckhead Avenue? I understand your testimony there. With regard to the registered [Notice of Discipline] letter, however, my question remains was there not a window of opportunity on July 2nd of 1992 that the pink slip could have been left at 305 Buckhead before it was remitted to the airmail field down at Hartsfield Airport?

THE WITNESS: Anything's possible. [T-169, l. 24 to T-170, l. 16]

(6)

Q. [BY MR. BISHOP] I'm also going to show you Defendant's Exhibit No. 19. Can you identify that?
A. [BY GAYLE BAKER, STATE BAR MEMBERSHIP COORDINATOR:] Yes. It's a receipt for Bishop's Bar dues, October 4th, 1991. [T-280, l. 7-10]

Q. And why was it less? Why was it $50 less than what it should have been?
A. I don't remember.
Q. Was it because I would have told you that I was no longer at 305 Buckhead Avenue and lived in Dawson County?
A. Yes, sir. [T-280, l. 19-25]

(7)

THE WITNESS [FORMER STATE BAR ASSISTANT GENERAL COUNSEL PAUL B. COHEN:] My recollection of my contacts with you -- the only time that I recall us meeting, just a general recollection that on maybe one, two, or perhaps three different occasions you either came up to the State Bar of Georgia or called me on the telephone to discuss in general terms, for lack of better words, to politic [sic] me about the complaint.
Q. [BY MR. BISHOP:] Okay. And what was your best recollection of the substance of those conversations?
A. I don't really have a recollection of the substance of the conversations. I think that in our discussion during the deposition you made some assertions that

perhaps I had informed you that there were quite a number of complaints filed against the State -- against lawyers each year, and that I perhaps informed you that it was going to take some time for this proces to work, but that we would be in contact with you. I do not specifically recall that, though. That's your assertion.
Q. But I mean that doesn't sound like something that you could not have said?
A. And as I said to you before, I might have said that. That's correct. [T-258, l. 21-25 to T-259, l. 20]

(8)

Q. [BY MR. BISHOP:] And do you recall discussing standard of conduct no. 40 with regard to a person receiving a payment from a third person after the representation has ended? *** [T-265, l. 24 to T-266, l. 2]
A. [BY AGC COHEN:] We could have discussed it, though. [T-266, l. 16]
Q. Rarely prosecuted?
A. That's correct. That particular standard is rarely prosecuted by the State Bar. *** [T-266, l. 1-3]

Supreme Court Docket No. 1021
SUPREME COURT OF GEORGIA
Atlanta Apr 1 1993

The Honorable Supreme Court met pursuant to adjournment. The following order was passed:

IN THE MATTER OF W. KENT BISHOP.

By order of this court dated February 18, 1993, this matter was remanded to the Review Panel and Lavinia B. George of the Clayton Judicial Circuit was appointed as Special Master to hear evidence on the sole issue of whether Respondent W. Kent Bishop was properly served. Lavinia B. George filed her recusal as a Special Master in this matter on March 25, 1993.

It is ordered that James R. Fortune, Jr., of the Griffin Judicial Circuit be appointed as Special Master to hear evidence on the sole issue of whether Respondent was properly served.

It is directed that such hearing be conducted within sixty (60) days, and that the Review Panel expedite its review of the Special Master's findings and transmit its decision to this Court.

[Clerk's certification omitted.]

S.C.D. 1021
SUPREME COURT OF GEORGIA
Atlanta FEB 18 1993

The Honorable Supreme Court met pursuant to adjournment. The following order was passed:

IN THE MATTER OF: W. KENT BISHOP

The motion for reconsideration in the above matter having been considered, it is ordered that it be remanded to the Review Panel, and that Lavinia B. George of the Clayton Judicial Circuit, be appointed as Special Master to hear evidence on the sole issue of whether Respondent was properly served.

It is directed that such hearing be conducted within sixty (60) days, and that the Review Panel expedite its review of the Special Master's findings and transmit its decision to this Court.

The opinion in this case, dated January 8, 1993, is temporarily vacated pending the foregoing proceedings.

[Clerk's certification is omitted.]

In the Supreme Court of Georgia
Decided: Jan 8 1993

IN THE MATTER OF W. KENT BISHOP.
(Supreme Court Docket No. 1021)

PER CURIAM.

Following an investigation of complaints against Respondent, the Investigative Panel of the State Disciplinary Board directed the Office of General Counsel of the State Bar to file Notices of Discipline imposing disbarment, as defined by State Bar Rule 4-102(b)(1), against Respondent. Service was perfected pursuant to Bar Rule 4-208.2(c), but Respondent failed to respond to the Notice of Discipline within twenty-three days, as provided for by Bar Rule 4-208.3(a).

The Notice of Discipline states that the Investigative Panel found that Respondent violated Standards 4, 21, 22, 23, 28, 30, 40, 45, 47 and 68 of Bar Rule 4-102. The Investigative Panel determined, inter alia, that Respondent was discharged by a client, but refused to withdraw; that he refused to return unearned attorney fees promptly; that he revealed confidences of the client without authority to the detriment of the client; that he allowed a third party to compensate him for legal services without consent of his client; that he improperly contacted a party whom he knew was represented by counsel; and that he failed to respond to the Investigative Panel.

The Investigative Panel determined that disbarment is the appropriate disciplinary sanction to be imposed upon Respondent for these violations.

Because the Respondent failed to reject the Notice of Discipline, as provided by Bar Rule 4-208.3, we adopt the Notice of Discipline as a final order. Bar Rule 4-208.1. It is ordered that Respondent be disbarred, and that his name be removed from the rolls of those allowed to practice law in the State of Georgia.

Clarke, C.J., Hunt, P.J., Benham, Fletcher, Sears-Collins and Hunstein, JJ. concur.

COMMITTEE ON THE ARBITRATION OF ATTORNEY FEE DISPUTES 247 Ga. A-1 (1980)

Mr. Eugene Burke Phillips, Petitioner
v.
Mr. Winf[or]d Kent Bishop, Respondent.

Rec'd Jul 12 1991

ARBITRATOR'S OATH OF OFFICE

I swear that I will faithfully and impartially determine the matters submitted to me according to law and the justice and equity of the case, without favor or affection to either party. So help me God.

/s/ Charles A. Riepenhoff, Jr.
Arbitrator

/s/ Benjamin A. Landey
Arbitrator

/s/ Scott Halpern
Arbitrator

Sworn to and subscribed
before me on this 12th
day of July, 1991.
/s/ Rita Payne
Notary Public. My commission expires
Sept. 24, 1991.

AWARD

We, the arbitrators of the attorney fee dispute between Mr. Eugene Burke Phillips, Petitioner, and Mr. Winf[or]d Kent Bishop, Respondent, hereby find and award as follows:

Mr. Winf[or]d Kent Bishop is not required to return any monies to Mr. Eugene Burke Phillips and is entitled to all fees collected.

This 12 day of July, 1991

/s/ Charles A. Riepenhoff, Jr.
Arbitrator

/s/ Benjamin A. Landey
Arbitrator

/s/ Scott Halpern
Arbitrator

August 27, 1991
RECEIVED DEC 30 1991

Ms. Rita Payne
Fee Arbitration Coordinator
State Bar of Georgia
800 The Hurt Building
Atlanta, Georgia 30303

Re: Fee Arbitration Case:
Mr. Eugene Burke Phillips,
Petitioner v.
Mr. Winf[or]d Kent Bishop,
Respondent

Dear Ms. Payne:

Having reviewed the issues raised by the Petitioner in his letter of July 15, 1991 addressed to Rita Payne, Fee Arbitration Coordinator, State Bar of Georgia, we are of the opinion that none of said issues change or effect the decision of the panel dated July 12, 1991 and therefore, our original decision stands as issued. We would further point out that the panel found the fees charged by Respondent to Petitioner to be reasonable and appropriate and the propriety of any third party payment made on behalf of Petitioner to Respondent was not properly before the panel.

Sincerely,
/s/ Scott Halpern
Scott A. Halpern
/s/ Benjamin Landey
Benjamin Landey
/s/ Charles A. Riepenhoff, Jr.
Charles A. Riepenhoff

II. ORDERS ON MOTION FOR RECONSIDERATION

S93Y1886
SUPREME COURT OF GEORGIA
Atlanta JUN 6 1994

The Honorable Supreme Court met pursuant to adjournment. The following order was passed:

IN THE MATTER OF: W. KENT BISHOP

It is ordered that the Second Motion for Reconsideration, in this case, received on May 23, 1994, is hereby allowed filed.

It is further ordered that upon consideration of such motion, it is ordered that it be hereby dismissed.

[Clerk's certification is omitted.]

S93Y1886
SUPREME COURT OF GEORGIA
Atlanta May 13 1994

The Honorable Supreme Court met pursuant to adjournment. The following order was passed:

IN THE MATTER OF W. KENT BISHOP

The motion for reconsideration and conditional motion for stay of effective date of order of April 18, 1994 filed by respondent W. Kent Bishop are both hereby denied. The order of April 18, 1994 is a final judgment of disbarment. Pursuant to Bar Rule 4-219(c), "After final judgment of disbarment, ... respondent shall immediately cease the practice of law in Georgia, and shall, within thirty days, notify all clients of his inability to represent them and of the necessity of promptly retaining new counsel, and shall take all actions necessary to protect the interests of his clients." Respondent shall further certify to the Court within forty-five days that he has satisfied the requirements of this Rule. Id.

All the Justices concur, except Carley, J., who dissents to the denial of Motion for Reconsideration only.

[Clerk's certificate is omitted.]

III. INTERNAL SUPREME COURT MEMORANDA

Tuesday p.m.
November 16, 1993

[Handwritten note at top of page:] "Hold for rule by Committee"

[Handwritten note at bottom of page:] "look at Sp Master rec & Review Panel rec - over"

[Handwritten note over, which is on back of ninth page of memorandum, six of which pages are the Old Rules:] "*S Master* said service complied with rule - *BUT* did not comply with due process [a line is drawn across the page and then appears:] decide what we will do with rule *1st*

S93Y1886. (Y2-013) In the Matter of:
W. Kent Bishop

Case: Oral argument granted to determine whether Bishop, who did not receive actual notice of disciplinary proceedings against him, may be disbarred based on the underlying conduct.

FACTS:

On January 3, 1992, the State Bar mailed two separate Notices of Investigation via certified delivery to Bishop's address at 305 Buckhead Avenue. This address was the official address or address of record with the State Bar. The Post Office subsequently forwarded the Notices of Investigation to Bishop's Post Office Box 11813, Atlanta, Georgia 30305 (a box which Bishop had shared with his parents for years). On July 11,

1991, approximately six months earlier, Bishop had filled out a change of address card which was valid for eighteen months. The Post Office left two separate notices for Bishop regarding the certified mail on two different occasions - January 7, and again on January 13, 1992. The Notices were then returned to the State Bar.

On January 30, 1992, after sending an investigator, the State Bar learned that Bishop had been evicted from his office at 305 Buckhead Avenue. On March 31, 1992, the Sheriff of Fulton county returned service *non est inventus* regarding the Notices of Investigation which had been attempted on the 305 Buckhead Avenue address. On April 8, 1992, the State Bar mailed service copies of the Notices of Investigation via registered mail to the same address; the Post Office subsequently returned the mail to the State Bar.

The Investigative Panel then met and voted to issue a Notice of Discipline requesting the disbarment of Bishop for the numerous instances of misconduct set forth in the Notices of Investigation. The Fulton County Sheriff attempted to serve the Notice at the 305 Buckhead Avenue address; however, returned service to the State Bar.

On July 2, 1992, the State then sent the Notice of Discipline via registered mail to the 305 Buckhead Avenue address. The mail was then forwarded to Bishop's post office box, but was subsequently returned to the State Bar "unclaimed."

At the hearing before the Special Master, two post office employees testified that notices for registered mail packages were customarily placed in patrons' mailboxes, and that such notice was placed in box number 11813 (Bishops') on July 3, 1992.

Additional testimony at the hearing indicated that Bishop had not claimed, in a separate case, a registered mail package sent by an opposing counsel. Also, supporting tesyimony indicated that Bishop did not know of the disciplinary proceedings or of his disbarment until he read it in the Fulton County Daily Report.

The Special Master found that the State Bar complied fully with the requirements of notice under Bar Rule 4-204.2. The State Bar, however, further found that Bishop did not have actual knowledge of the disciplinary proceedings against him or of his disbarment.

CONTENTIONS

W. Kent Bishop: Bishop argues that Rules 4-204.2 and 4-208.2(c) violate the Due Process Clause of the Georgia and United States Constitutions on their face because they: (1) are void for vagueness; (2) contain conclusive presumptions that shift the burden of persuasion from the State Bar to the respondent. The Rules also violate due process as applied to the facts of this case.

1) *Void for vagueness*: Rule 4-208.2 is vague as to whether certified mail must be attempted prior to other

forms of service. Also, the rule fails to clearly advise the State Bar General Counsel when to seek an acknowledgement [sic] of service from the attorney.

The Notice of Discipline procedure is also invalid as there are no standards that guide the Investigative Panel in determining whether to issue a Notice of Discipline. Also, the Notice of Investigation does not advise the respondent that a failure to respond will likely lead the Panel to issue a Notice of Discipline. Finally, the discipline procedures invalidate Rule 1-207 which charges that each member of the Bar must notify the Bar of any changes of address. This Rule does not notify the attorney that disbarment is a consequence of the Bar being unaware of an attorney's address who has had a grievance filed against him.

2) *Conclusive Presumptions*: Rule 4-208.2(c) contains conclusive presumptions that shift the burden of persuasive [sic] to the respondent attorney: (1) receipt of a *non est inventus* return from the sheriff is proof that service could not have been perfected by certified mail to the respondent attorney's correct address; and (2) the last address contained in the official membership records of the State Bar is *ipso facto* the best address available to the State Bar and is the only address that needs to be used to serve the attorney at that time.

3) *Unconstitutional as applied*: If the presumptions are merely permissive,

Rules 4-204.2 and 4-208.2(c) are unconstitutional as applied because the sheriff will not go beyond the trial lawyer's request to serve the attorney at the address specified.

Note: Bishop argues that the only way in which the Rules would not violate due process is to require actual notice to the respondent attorney by, *e.g.*, explicitly permitting substituted service.

State Bar of Georgia: The State Bar argues that: (1) it complied fully with this Court's rules in perfecting service of the Notice of Discipline upon Bishop; (2) such service comports with due process; (3) Bishop wilfully evaded other registered mailings not at issue in this case; and (4) the method of substituted service prescribed in Rule 4-208.2(c) conforms with the standards generally applied in lawyer discipline matters throughout the United states.

1) *Compliance with rules re: perfection of service*: The State Bar indisputably argues that it complied with Rule 4-208.2(c)(3).

2) & 3) *Due process; evasion of other mailings*: The substituted service under Rule 4-208.2(c) satisfies the due process requirement. Because Bishop did not in fact receive personal service does not reender the Bar Rule unconstitutional. Also, because Bishop ignored his responsibility to claim any registered mail sent to his post office box while he was aware that the grievances were

pending, under *Melton*, he cannot now argue lack of due process. In *Melton v. Johnson*, 242 Ga. 400 (1978), this Court held that service by mail was constitutional when a defendant evaded service of process.

4) *Similar service rules*: The Model Rules for Lawyer Discipline, the Model Federal Rules of Disciplinary Enforcement, and the Rules Governing Attorney Conduct in the U.S. Court of Appeals for the Eleventh Circuit provide for similar service in disciplinary matters.

[Bar rules 4-204 (a portion), 4-204.1, 4-204.2, 4-204.3, 4-204.4, 4-204.5, 4-205, 4-206, 4-207, 4-208, Old Rules 4-208.1, 4-208.2, 4-208.3, 4-208.4, 4-209 are omitted]

Disciplinary Memorandum

Case: In the Matter of W. Kent Bishop S93Y1886; Y2-0131; Justice Thompson

Staff Attorney: Lisa Y. Smith

Type: Disbarment

Please find attached a proposed per curiam opinion in the above-described action.

[The draft opinion differs from the published order only in these respects:
(1) The final order adds one paragraph (the penultimate paragraph) that begins with "The record reflects that" and ends with "the decision to ignore the mailings."
(2) There is a paragraph break after the sentence: "After considering the record in this case, this Court does not adopt the recommendation of the Review Panel."
(3) The draft indicates a unanimous decision, whereas the final order shows three dissents in a seven member court.
(4) At the top of page one there is no date entered after "Decided" and the following appears after the case name: "(S.D.B. Doc. Nos. 2347, 2348)"]

[Handwritten notes at the top, left:]
4-3 C5

[Handwritten notes at the top right:]
3/30 *Hold* Put on D.L. next wk.
4/6 - 4-3 7, 3, 6 disbar

[Handwritten note on sticker at bottom:]
Removed from DL 5/4 - Put on DL for 5/12

M E M O R A N D U M

TO: All Justices

FROM: Justice Thompson

RE: S93Y1886 (Y2-013) In the Matter of W. Kent Bishop

DATE: March 28, 1994

Please find attached a revised per curiam opinion in the above-described action.

Please bring to banc on Wednesday.

[Draft opinion is omitted. It is identical to the final order entered on Apr. 18, 1994, except for the following difference: After "Decided" there is no date entered.]

IV. RELEVANT ORDER IN RELATED CASE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN THE MATTER OF:)
W. KENT BISHOP) Disciplinary Action
Georgia Bar No. 058900)

Filed in Clerk's Office U.S.D.C. - Atlanta FEB 26 1993 Luther D. Thomas, Clerk by D. McDonald

ORDER

This court's order in the above-styled matter dated February 4, 1993 was based upon the order of the Supreme Court of Georgia dated January 8, 1993. The Georgia Supreme Court has now vacated its order of January 8, 1993. Therefore, the order of this court dated February 4, 1993 is hereby VACATED.

SO ORDERED, this 25 day of February, 1993.

/s/ G. Ernest Tidwell
G. ERNEST TIDWELL
JUDGE, UNITED STATES DISTRICT COURT

V. PROSECUTING DOCUMENTS

[*Notice of Investigation* issued by Office of General Counsel of State Bar of Georgia, in respect of grievance filed by Eugene B. Phillips, received by petitioner on March 9, 1993 [sic], by certified mail, return receipt requested:]

STATE BAR OF GEORGIA
NOTICE OF INVESTIGATION

CONFIDENTIAL

To: Mr. W. Kent Bishop
Attorney at Law
305 Buckhead Avenue
Suite 124
Atlanta, Georgia 30305

This is a Notice of Investigation issued pursuant to Rule 4-204.1 of the Rules and Regulations of the Organization and Government of the State Bar of Georgia, Ga. Ct. & Bar Rules, pp. 11-56.2, *et seq.*

1.

The grievance of Eugene B. Phillips is being transmitted to the Investigative Panel of the State Disciplinary Board.

2.

A copy of the grievance is attached hereto.

3.

You are charged with a possible violation of Standards 4, 21, 22, 23, 28, 30, 40, 45 and 47 of Bar Rule 4-102 and Bar Rule 4-104, Ga. Ct. & Bar Rules, pp. 11-56.2 *et seq.*

4.

The Bar Rules require you to file a sworn response to this Notice of Investigation. You should be aware that your failure to respond to this Notice of Investigation within thirty (30) days may result in a violation of Standard 68, in addition to those Standards mentioned above.

5.

If a violation of any of the Standards listed in Paragraph 3 of this Notice may be punished by suspension or disbarment, then your failure to respond to the Investigative Panel may authorize the Panel to suspend you until a response is filed. Bar Rule 4-204.3, Ga. Ct. & Bar Rules, pp. 11-56.2, *et seq.*

6.

Daniel C. Haygood is the member of the Investigative Panel who will be investigating your case. The Panel member's address is **P. O. Box 8108, Athens, Georgia 30603** to the Panel member assigned to your case. Please send an original and two (2) copies of your response to the Investigative Panel member.

7.

You have the right to challenge the competency, qualifications, or objectivity of any member of the Investigative Panel. A list of the members of the Panel is enclosed with this Notice, as is a copy of Rule 15 of the Rules of Conduct of the Investigative Panel of the State Disciplinary Board.

8.

In the event someone other than yourself signed the certified mail return receipt for this notice, please execute the enclosed Acknowledgment of Service

and return it to the Office of the General Counsel in the enclosed self-addressed envelope within ten (10) days. If you did not sign the certified mail return receipt and the Acknowledgment of Service is not received in the Office of the General Counsel within ten (10) days, service may be perfected by personal or Sheriff's service pursuant to the provisions of Bar Rule 4-204.2(b).

CERTIFICATE OF SERVICE

This is to certify that I have this day served this Notice of Investigation and attachments upon W. Kent Bishop by mailing said document via Certified Mail, No. P 512 582 636, Return Receipt Requested, Restricted Delivery in an envelope properly addressed with adequate postage.

This 3rd day of January, 1992.

/s/ Paul B. Cohen
Paul B. Cohen
Assistant General Counsel

State Bar of Georgia
800 The Hurt Building
50 Hurt Plaza
Atlanta, Georgia 30303

cc: Mr. Eugene B. Phillips
3152 B Briarcliff Road, N.E.
Atlanta, Georgia 30329

Mr. Daniel C. Haygood
Member, Investigative Panel

[*Notice of Discipline* issued by Office of General Counsel of State Bar of Georgia in respect of grievances of both Eugene Phillips and his counsel Randy Joan Comins, received by petitioner on January 20, 1993, from William P. Smith, III, General Counsel, State Bar of Georgia, in personal interview after reading about disbarment in newspaper.]

IN THE SUPREME COURT
STATE OF GEORGIA

DISCIPLINARY PROCEEDINGS

IN THE MATTER OF: W. KENT BISHOP,
Respondent

Supreme Court Docket No. _____
State Disciplinary Board Docket Nos 2347 & 2348

NOTICE OF DISCIPLINE

The Investigative Panel of the State Disciplinary Board of the State Bar of Georgia, through its Counsel, issues this Notice of Discipline pursuant to Bar Rule 4-208.1 of Part IV (Discipline) of the Rules and Regulations for the Organization and Government of the State Bar of Georgia (hereinafter "Bar Rules"), Ga. Ct. & Bar Rules, pp. 11-56.2, *et seq.* and shows the following:

1.

The Investigative Panel of the State Disciplinary Board, after conducting an investigation into the Grievances filed against Attorney W. Kent Bishop, (hereinafter "Respondent"), with the State Bar of Georgia by Eugene Phillips

and Randy Joan Comins, Esquire, found that Respondent violated Standards 4, 21, 22, 23, 28, 30, 40, 45, 47 and 68 of Bar Rule 4-102 (Discipline). The State Bar of Georgia attaches hereto as Exhibit "A" and incorporates herein by reference, a copy of the grievance filed by Randy Comins, Esquire. The State Bar of Georgia attaches hereto as Exhibit "B" and incorporates herein by reference, a copy of the grievance filed by Eugene Phillips.

2.

The record is [sic] this case shows that Respondent was hired by Eugene Phillips to seek a modification of child custody.

3.

The Investigative Panel determined that the Respondent was formally discharged by his client and Respondent refused to withdraw in violation of Standard 21 of Bar Rule 4-102. The Panel also determined that Respondent did not take reasonable steps to avoid foreseeable prejudice to his client and refused to promptly refund unearned attorney's fees in violation of Standards 22 and 23.

4.

The Investigative Panel also determined that Respondent revealed certain confidences and secrets of his client, to the detriment of his client, without authority in violation of Standard 28. Furthermore, the Panel determined that Respondent should have ceased his representation of his client when it became apparent that his judgment was affected by his own personal interests. The Panel found this to be

violation of Standard 30. The Panel found further that Respondent allowed a third-party to compensate him for legal services without the authority or consent of his client in violation of Standard 40 and improperly contacted a party he knew was represented by counsel in violation of Standard 47.

5.

Further investigation by the Investigative Panel revealed that Respondent engaged in conduct contrary to a disciplinary rule in violation of Standard 45 and Respondent failed to respond to the Investigative Panel in violation of Standard 68.

6.

The Investigative Panel has determined that the appropriate disciplinary sanction to be imposed upon Respondent is disbarment.

7.

Unless Respondent affirmatively rejects this Notice of Discipline, he shall be sanctioned as ordered by the Investigative Panel.

This 28th day of May, 1992.

/s/ William P. Smith, III
William P. Smith, III
General Counsel
State Bar No. 665000

/s/ Jeffrey R. Davis
Jeffrey R. Davis
Assistant General Counsel
State Bar No. 210815

STATE BAR OF GEORGIA

800 The Hurt Building
50 Hurt Plaza
Atlanta, Georgia 30303
(404) 527-8720

[CERTIFICATE OF SERVICE by Certified, United States Mail, Restricted Delivery, signed by Jeffrey R. Davis, Assistant General Counsel is omitted. He admitted at the Special Master's hearing on May 20, 1993, that he in fact did not mail the Notice of Discipline by Certified Mail.]

["*Proof*" *of Service* of Notice of Discipline in respect of both grievances, received by petitioner on January 20, 1993, from Mr. Smith in personal interview:

IN THE SUPREME COURT
STATE OF GEORGIA

DISCIPLINARY PROCEEDINGS

IN THE MATTER OF:
W. KENT BISHOP, Respondent.

SUPREME COURT DOCKET NO. _____
STATE DISCIPLINARY BOARD
DOCKET NOS. 2347 & 2348

PROOF OF SERVICE OF NOTICE OF DISCIPLINE;
REQUEST FOR ISSUANCE OF ORDER

COMES NOW the State Bar of Georgia

and, pursuant to Bar Rule 4-208.1, 4-208.2, and 4-208.3, files this, its Proof of Service of Notices of Discipline; Request for Issuance of Order filed in the above-styled matter. In support of this pleading, the State Bar makes the showings below:

1.

Personal service of the Notices of Discipline was attempted, pursuant to Bar Rule 4-208.2(c). The Sheriff of Fulton County entered his Non Est Inventus on June 8, 1992. Said Sheriff's Entry of Service is attached hereto as Exhibit "A", and is hereby filed with the Clerk of the Supreme Court of Georgia.

2.

Service of the Notices of Discipline was perfected by registered mail, pursuant to Bar Rule 4-208.2(c)(3), on July 1, 1992. An Affidavit from the Membership Coordinator of the State Bar of Georgia regarding Respondent's last address, as contained in the membership records of the State Bar of Georgia, is attached hereto asa Exhibit "B", and is hereby filed with the Clerk of the Supreme Court of Georgia. The Unclaimed Registered Mail package (No. R 495 607 966) sent to the last known address of Respondent according to current State Bar Membership records, is attached hereto as Exhibit "C", and is hereby filed with the Clerk of the Supreme Court of Georgia. The Registered Mail package was forwarded by the United States Postal Service to Respondent's new address, P.O. Box 11813, Atlanta, Georgia 30355, and was left unclaimed by Respondent.

3.

An excess of twenty-three (23) days

has elapsed since service of the Notices of Discipline was perfected.

4.

Bar Rule 4-208.3(a) provides that: [omitted].

4. [sic]

No Notice of rejection of the Notice of Discipline has been filed with the Clerk of the Supreme Court within the requisite time set by Bar Rule 4-208.3(a).

WHEREFORE, the State Bar of Georgia requests that this Court issue a final order adopting the Notice of Discipline.

This 5th day of August, 1992.

Respectfully submitted,
/s/ Jeffrey R. Davis
Jeffrey R. Davis
Assistant General Counsel

[Address; exhibits omitted.]

VI. U.S. CONSTITUTIONAL PROVISIONS INVOLVED IN, RELEVANT TO, THE CASE:

Art. I, Sec. 8, Cl. 18

The Congress shall have power ***

To make all Laws which shall be necessary and proper for carrying into execution the foregoing Powers and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Art. I, Sec. 10:

Section 10. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility. ***

Art. III, Sec. 1.

The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. ***

Art. VI, Cl. 2

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or

Laws of any State to the Contrary notwithstanding.

Amendment [IV.]

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment [V.]

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life of limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment [VI.]

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted

with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Amendment [VII.]

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Amendment [VIII.]

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment XIV.

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. ***

VII. FEDERAL STATUTES INVOLVED IN, RELEVANT TO, THE CASE:

96 Stat. 246
Public Law 97-227
97th Congress

AN ACT

To delay the effective date of proposed amendments to rule 4 of the Federal Ruels of Civil Procedure.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That notwithstanding the provisions of section 2072 of title 28, United States Code, the amendments to rule 4 of the Federal Rules of Civil Procedure as proposed by the Supreme Court of the United States and trasmitted to the Congress by the Chief Justice on April 28, 1982, shall take effect on October 1, 1983, unless previously approved, disapproved, or modified by Act of Congress.

SEC. 2. This Act shall be effective as of August 1, 1982, but shall not apply to the service of process that takes place between August 1, 1982, and the date of enactment of this Act.

Approved August 2, 1982.

96 Stat. 2527
Public Law 97-462
97th Congress

An Act

To amend the Federal Rules of Civil Procedure with respect to certain service of process by mail, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal Rules of Civil Procedure Amendments Act of 1982".

SEC. 2. The Federal Rules of Civil Procedure are amended as follows: ***

(2) Subsection (c) of Rule 4 of such Rules is amended to read as follows:

(c) SERVICE. *** (2) ***

(C) A summons and complaint may be served upon a defendant *** -

(i) pursuant to the law of the State in which the district court is held for the service of summons or other like process upon such defendant in an action brought in the courts of general jurisdiction of that State, or

(ii) by mailing a copy of the summons and of the complaint (by first-class mail, postage prepaid) to the person to be served, together with two copies of a notice and acknowledgment conforming substantially to form 18-A and a return

envelope, postage prepaid, addressed to the sender. If no acknowledgment of service under this subdivision of this rule is received by the sender within 20 days after the date of mailing, service of such summons and complaint shall be made under subparagraph (A) or (B) of this paragraph in the manner prescribed by subdivision (d)(1) or (d)(3).

(D) Unless good cause is shown for not doing so the court shall order the payment of the costs of personal service by the person served if such person does not complete and return within 20 days after mailing, the notice and acknowledgment of receipt of summons. ***

SEC. 4. The amendments made by this Act shall take effect 45 days after the enactment of this Act.

SEC. 5. The amendments to the Federal Rules of Civil Procedure, the effective date of which was delayed by the Act entitled "An Act to delay the effective date of proposed amendments to rule 4 of the Federal Rules of Civil Procedure", approved August 2, 1982 (96 Stat. 246), shall not take effect. ***

Approved January 12, 1983.

15 U.S.C.A. Section 1.

Section 1. Trusts, etc., in restraint of trade illegal; exception of resale price maintenance; penalty.

"Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States or with foreign nations, is hereby declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy declared to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding $10,000,000, if a corporation, or, if any other person, $350,000, or by imprisonment not exceeding three years, or by both said punishments in the discretion of the court."

28 U.S.C. Sec. 2072

(a) The Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence for cases in the United States district courts (including proceedings before magistrates thereof) and courts of appeals.

(b) Such rules shall not abridge, enloarge or modify any substantive right. Alkl laws in conflict with such rules shall be of no further force or effect after such rules have taken effect. ***

28 U.S.C. Sec. 2361

In any civil acrtion of interpleader or in the nature of interpleader under section 1335 of this title, a district court may issue its process for all claimants and enter its order restraining them from instituting or prosecuting any proceeding in any State or United States court affecting the property, instrument or obligation involved inthe interpleader action until forther order of the court. Such process and order shall be returnable at such time as the court or judge thereof directs, and shall be addressed to and served by the United States marshals for the respective districts where the claimants reside or may be found.

Such district court shall hear and determine the case, and may discharge the plaintiff from further liability, make the injunction permanent, and make all appropriate orders to enforce its judgment.

VIII. REGULATIONS INVOLVED IN, RELEVANT TO, THE CASE:

A. Rules and Regulations for the Organization and Government of the State Bar of Georgia. 219 Ga. 873 (1964), as subsequently amended.

[Old] Rule 1-207. Change of Address.

It is incumbent upon each member of the State Bar of Georgia to notify the State Bar of any change in address, telephone number, or name.

Rule 4-102. Disciplinary Action; Levels of Discipline; Standards.

***

(d) The Standards of Conduct are: ***

Standard 28*(b)(4)* ***

Standard 40*(a)* ***

Standard 68 ***

Rule 4-204. Preliminary Investigation by Investigative Panel; In General.

(a) Each grievance alleging conduct which appears to invoke the disciplinary jurisdiction of the State Disciplinary Board of the State Bar of Georgia shall be referred in accordance with Rule 4-204.1 by the Office of the General Counsel to the Investigative Panel or a subcommittee of the Investigative Panel for investigation and disposition in accordance with its rules. The Investigative Panel shall appoint one of

its members to be responsible for the investigation. The Office of the General Counsel shall simultaneously assign a staff investigator to assist in the investigation. If the investigation of the Panel establishes probable cause to believe that the respondent has violated one or more of the provisions of Part IV, Chapter 1 of these rules, it shall:

(1) issue a letter of admonition;

(2) issue an Investigative Panel Reprimand;

(3) issue a Notice of Discipline; or

(4) refer the case to the Supreme Court of Georgia for hearing before a special master and file a formal complaint with the Supreme Court of Georgia, all as hereinafter provided. All other cases may be either dismissed by the Investigative Panel or referred to the Fee Arbitration Committee or the Committee on Lawyer Impairment.

(b) The primary investigation shall be conducted by the staff investigators, the staff lawyers of the Office of the General Counsel, and the member of the investigative Panel responsible for the investigation. The Board of Governors of the State Bar of Georgia shall fund the Office of the General Counsel so that the Office of the General Counsel will be able to adequately investigate and prosecute all cases.

Rule 4-204.1. Notice of Investigation.

(a) Upon completion of its screening of a grievance under Rule 4-202, the Office of the General Counsel shall forward those grievances which appear to invoke the disciplinary jurisdiction of the State Bar of Georgia to the Investigative Panel, or subcommittee of the Investigative Panel by serving a Notice of Investigation upon the Respondent.

(b) The Notice of Investigation shall accord the respondent reasonable notice of the charges against him and a reasonable opportunity to respond to the charges in writing and shall contain:

(1) a statement that the grievance is being transmitted to the Investigative Panel, or subcommittee of the Investigative Panel;

(2) a copy of the grievance;

(3) a list of the Standards of Conduct which appear to have been violated;

(4) the name and address of the Panel member assigned to investigate the grievance and a list of the Panel, or subcommittee of the Panel members;

(5) a statement of respondent's right to challenge the competency, qualifications or objectivity of any Panel member.

(c) The form for the Notice of

Investigation shall be approved by the Investigative Panel.

Rule 4-204.2. Service of the Notice of Investigation.

The Office of the General Counsel shall cause the Notice of Investigation to be served upon the respondent in the following manner:

(a) Service may be accomplished by certified mail return receipt requested. The return receipt, signed by the respondent, shall constitute proof of service.

(b) In the event service cannot be perfected by certified mail, the Office of the General Counsel may perfect service by personal or Sheriff service to respondent and may use for the purpose of personal service, any person approved by the Chairman of the Investigative Panel or his or her designee.

(c) In the event service cannot be perfected by certified mail, personal or Sheriff service, the Office of the General Counsel may perfect service by registered mail to the last address of the respondent as contained in the official membership records of the State Bar of Georgia. Receipt of a Sheriff's Non Est Inventus shall constitute proof that service cannot be perfected by certified mail, personal or Sheriff's service.

(d) An acknowlegement of service from the respondent shall constitute

conclusive proof of service and shall eliminate the need to utilize any other form of service.

Rule 4-204.3. Answer to Notice of Investigation Required.

(a) The respondent shall file a written response under oath to the Notice of Investigation with the panel member assigned to investigate the grievance within thirty (30) days of service.

(b) The written response must address specifically all of the issues set forth in the Notice of Investigation.

*** (d) In cases where the maximum sanction is disbarment or suspension, failure to respond by the respondent may authorize the Investigative Panel or subcommittee of the Panel to suspend the respondent until a response is filed.

*** (2) When the Investigative Panel or subcommittee of the Panel determines that a respondent has failed to respond in accordance with the rules of the Panel and that the respondent should be suspended, the Office of General Counsel shall notify the Supreme Court of Georgia that the panel has made such a recommendation. The Supreme Court shall enter an appropriate Order. ***

[Old] Rule 4-208.1. Notice of Discipline

In any case where the Investigative Panel or a subcommittee of the Panel finds probable cause, the Panel may issue a Notice of Discipline imposing any level

of public disciplinary sanctions authorized by these rules. The Notice of Discipline shall be a final order of disciplinary sanctions unless affirmatively rejected by the respondent as provided in [Old] Rule 4-208.3.

[Old] Rule 4-208.2. Notice of Discipline; Contents; Service

(a) The Notice of Discipline shall state the standards which the Investigative Panel found that the respondent violated and the disciplinary sanction to be imposed.

(b) The original Notice of Discipline shall be filed with the Clerk of the Supreme Court of Georgia.

(c) The respondent shall be served with a copy of the Notice of Discipline in the following manner:

(1) service may be accomplished by certified mail return recipt requested. The return receipt, signed by the respondent, shall constitute proof of service.

(2) In the event service cannot be perfected by certified mail, the Office of the General Counsel may perfect service by personal or Sheriff service to respondent and may use for the purpose of personal service any person approved by the Chairperson of the Investigative Panel or his or her designee.

(3) In the event service cannot be perfected by certified mail, personal or

Sheriff service, the Office of the General Counsel may perfect service by registered mail to the last address of the respondent as contained in the official membership records of the State Bar of Georgia. Receipt of a Sheriff's Non Est Inventus shall constitute proof that service cannot be perfected by certified mail, personal or Sheriff's service.

(4) An acknowledgment of service from the respondent shall constitute conclusive proof of service and shall eliminate the need to utilize any other form of service.

(d) The Office of the General Counsel shall file the documents by which service was accomplished with the Clerk of the Supreme Court of Georgia.

(e) The level of disciplinary sanction in any Notice of Discipline rejected by a respondent or the Office of the General Counsel shall not be binding on the Special Master, the Review Panel or the Supreme Court of Georgia.

[Old] Rule 4-208.3. Rejection of Notice of Discipline

(a) The Notice of Discipline shall become a final order unless the respondent or the Office of the General Counsel files a Notice of Rejection of the Notice of Discipline with the Clerk of the Supreme Court of Georgia within twenty (20) days following service of the Notice of Discipline. In the event service was accomplished by registered

mail, the respondent shall have twenty-three days from the date the Notice of Discipline was mailed to file the Notice of Rejection.

(b) Any Notice of Rejection by the respondent shall be served upon the Office of the General Counsel of the State Bar of Georgia. Any Notice of Rejection by the Office of the General Counsel of the State Bar of Georgia shall be served upon the respondent. No rejection by the Respondent shall be considered valid unless the Respondent files a written response to the pending grievance at or before the filing of the rejection.

(c) The filing of a Notice of Rejection shall constitute an election for the Supreme Court to appoint a Special Master and the matter shall thereafter proceed pursuant to Rules 4-209 through 4-225.

[Old] Rule 4-208.4. Formal Complaint Following Notice of Rejection of Discipline

(a) The Office of the General Counsel shall file a formal complaint within thirty days following the filing of a Notice of Rejection. At the same time, a Petition for Appointment of Special Master and proposed order thereon shall be filed. The Notice of Discipline shall operate as the notice of finding of probable cause by the Investigative Panel.

(b) The Office of the General Counsel may obtain extensions of time for

the filing of the formal complaint from the Chairperson of the Investigative Panel or his or her designee.

(c) After the rejection of a Notice of Discipline and prior to the time of the filing of the formal complaint, the Investigative Panel may consider any new evidence regarding the grievance and take appropriate action.

B. AMENDMENTS TO RULES AND REGULATIONS FOR THE ORGANIZATION AND GOVERNMENT OF THE STATE BAR OF GEORGIA (Appearing in the April 14, 1994 edition of Georgia Advance Sheets)

It is ordered that Rules 1-207 and 4-208.1 through 4-208.3 of the Rules and Regulations for the Organization and Government of the State Bar of Georgia be amended, effective April 14, 1994, by striking these rules in their entirety and substituting new Rules 1-207 and 4-208.1 through 4-208.3, as attached.

[New] Rule 1-207. Change of Address.

All members of the State Bar of Georgia shall keep the membership department, of the State Bar of Georgia informed of their current name, address and telephone number. It is incumbent upon those authorized to practice to keep the membership information current and accurate. The Court and the State Bar of Georgia may rely on the address carried by the membership department and failure on the part of a member to notify the membership department may have adverse

consequences to a member. The choice of a member to use *only* a post office box address on the Bar membership records shall constitute an election to waive personal service in any proceedings between the Bar and the member. Notification given to any department of the Bar other than the Membership Department shall not satisfy this requirement.

[New] Rule 4-208.1. Notice of Discipline.

(a) In any case where the Investigative Panel or a subcommittee of the Panel finds probable cause, the Panel may issue a Notice of Discipline imposing any level of public discipline authorized by these rules.

(b) Unless the Notice of Discipline is rejected by the respondent as provided in [New] Rule 4-208.3, (1) the respondent shall be in default; (2) the respondent shall have no right to any evidentiary hearing; and (3) the respondent shall be subject to such discipline and further proceedings as may be determined by the Supreme Court.

[New] Rule 4-208.2. Notice of Discipline: Content: Service.

(a) The Notice of Discipline shall state the following:

(1) The Standards which the Investigative Panel found that the respondent violated,

(2) The facts, which if unrefuted, support the finding that such Standards have been violated,

(3) The level of public discipline recommended to be imposed,

(4) The reasons why such level of discipline is recommended, including matters considered in mitigation and matters considered in aggravation, and such other considerations deemed by the Investigative Panel to be relevant to such recommendation,

(5) The entire provisions of [New] Rule 4-208.3 relating to rejection of Notice of Discipline. This may be satisfied by attaching a copy of the Rule to the Notice of Discipline and referencing same in the Notice.

(6) A copy of the Memorandum of Grievance.

(7) A statement of any prior discipline imposed upon the respondent, including confidential discipline under Rules 4-205 to 4-208.

(b) The original Notice of Discipline shall be filed with the Clerk of the Supreme Court of Georgia, and a copy of the Notice of Discipline shall be served upon the respondent.

(c) An acknowledgment of service of a copy of the Notice of Discipline from the respondent shall constitute conclusive proof of service and shall eliminate the need to utilize any other form of service.

(d) In the absence of an acknowledgment of service, and subject to

the provisions of sub-paragraph (e) below, the respondent shall be served with a copy of the Notice of Discipline in the following manner:

(1) Certified mail, return receipt requested. The return receipt, signed by the respondent, shall constitute proof of service. Receipt of a return receipt certificate signed by someone other than the respondent, or return of the certified mail letter undelivered shall constitute proof that service cannot be perfected by certified mail.

(2) In the event that certified mail service cannot be perfected, service may be accomplished by personal service by Sheriff or any person approved by the Chairperson of the Investigative Panel or his or her designee. Receipt of a Sheriff's Non Est Inventus shall constitute proof that service cannot be perfected by personal service and, the choice of a respondent to use *only* a post office box address on the Bar membership records shall constitute an election to waive personal service.

(3) In the event that neither certified mail service nor personal service can be perfected, service may be accomplished by publication once a week for two weeks in the legal organ of the county of respondent's address, as shown in the respondent's address [sic] as contained in the membership records of the State Bar of Georgia.

(e) By authorization of the Chairperson of the Investigative Panel,

service may be perfected by publication without the necessity of first attempting personal or certified mail service. Reasons for the granting of authorization may include, but shall not be limited to, recent unsuccessful attempts at personal or certified mail service at the respondent's address as contained in the membership records of the State Bar of Georgia.

(f) Those authorized to practice law in Georgia shall keep the membership department of the State Bar of Georgia informed of their current name, address and telephone number. It is incumbent upon those authorized to practice to keep the membership information current and accurate. The Court and the State Bar of Georgia may rely on the address carried by the membership department and failure on the part of a respondent to notify the membership department may have adverse consequences to a respondent. The choice of a respondent to use *only* a post office box address on the Bar membership records shall constitute an election to waive personal service. Notification given to any department of the Bar other than the Membership Department shall not satisfy this requirement.

(g) The Office of the General Counsel shall file the documents by which service was accomplished with the Clerk of the Supreme Court of Georgia.

(h) The level of disciplinary sanction in any Notice of Discipline rejected by a respondent or the Office of the General Counsel shall not be binding

on the Special Master, the Review Panel or the Supreme Court of Georgia.

[New] Rule 4-208.3. Rejection of Notice of Discipline.

(a) In order to reject The Notice of Discipline the respondent or the Office of the General Counsel must file a Notice of Rejection of the Notice of Discipline with the Clerk of the Supreme Court of Georgia within thirty (30) days following service of the Notice of Discipline. In the event service was accomplished by certified mail, the respondent shall have thirty-three (33) days from the date the Notice of Discipline was mailed to file the Notice of Rejection.

(b) Any Notice of Rejection by the respondent shall be served upon the Office of the General Counsel of the State Bar of Georgia. Any Notice of Rejection by the Office of the General Counsel of the State Bar of Georgia shall be served upon the respondent. No rejection by the Respondent shall be considered valid unless the Respondent files a written response to the pending grievance at or before the filing of the rejection. A copy of such written response must also be filed with the Clerk of the Supreme Court at the time of filing the Notice of Rejection.

(c) The timely filing of a Notice of Rejection shall constitute an election for the Supreme Court to appoint a Special Master and the matter shall thereafter proceed pursuant to Rules 4-

209 through 4-225.

Rule 4-208.4. Formal Complaint Following Notice of Rejection of Discipline. **(not mentioned in preface, but same as old rule with comma deleted in fifth line of (a))**

(a) The Office of the General Counsel shall file a formal complaint within thirty days following the filing of a Notice of Rejection. At the same time, a Petition for Appointment of Special Master and proposed order thereon shall be filed. The Notice of Discipline shall operate as the notice of finding of probable cause by the Investigative Panel.

(b) The Office of the General Counsel may obtain extensions of time for the filing of the formal complaint from the Chairperson of the Investigative Panel or his or her designee.

(c) After the rejection of a Notice of Discipline and prior to the time of the filing of the formal complaint, the Investigative Panel may consider any new evidence regarding the grievance and take appropriate action.

IX. PLACES IN THE RECORD WHERE THE FEDERAL QUESTION WAS TIMELY AND PROPERLY RAISED SO AS TO GIVE THE SUPREME COURT JURISDICTION RTO REVIEW THE JUDGMENT ON A WRIT OF CERTIORARI:

U.S. Const. Art. I, Sec. 10 (bill of attainder and ex post facto law):

Respondent's Motion for Reconsideration, filed in Georgia Supreme Court on April 28, 1994, p. 3, 6 - 14, and particularly, argument heading II. ORDER [of April 18, 1994] NOT ONLY OVERLOOKS OLD RULE 4-208.2, BUT APPLIES SUB SILENTIO NEW RULE 4-208.2, WHICH ABROGATES SEVERAL OF RESPONDENT'S LEGAL DEFENSES TO SERVICE AND THEREBY CONSTITUTES BILL OF ATTAINDER AND EX POST FACTO LAW VOID UNDER ARTICLE I, SEC. 10 OF THE UNITED STATES CONSTITUTION.

Respondent's First Amendment to Respondent's Motions for Reconsideration, Respondent's Motion for Writ of Habeas Corpus, Based on Supreme Court Memoranda that April 18, 1994 Order was Intentionally Delayed so that Old Rule 4-208.2(c) Could be Amended by New Rule 4-208.2, thus Enabling the Majority of the Court to Avoid Application of the Old Rule to Respondent's Case, but instead to Apply the New Rule *Sub Silentio* for the Purpose of Justifying a Disbarment of the Respondent, filed in Georgia Supreme Court on July 1, 1994, and accompanying affidavit, dated and filed July 1, 1994, paragraph 4: Until I saw the memoranda attached, the legal argument in my Motion for Reconsideration, filed April 28, 1994, that New Rule 4-208.2 was a bill of

attainder and, as applied, an ex post facto law, was based on my legal intuition and a critical examination of the order of April 18, 1994, Old Rule 4-208.2, and New Rule 4-208.2. I truly believe that I now have proof that New Rule 4-208.2 was a bill of attainder and its application made it an *ex post facto* law. Internal memoranda attached to Exhibit "G" of petitioner's Application for Extension of Time to File Petition for Writ of Certiorari in this Court, filed July 25, 1994.

U.S. Const. Amendment [IV.] (unreasonable seizure):

Respondent's Supplemental Brief to Call Attention to Recent United States Supreme Court Decisions that Suggest Fourth and Eighth Amendment Violations by State Bar, as Embodied in January 8, 1993 Order, filed in Georgia Supreme Court on January 3, 1994, pp. 1, 2-7.

Respondent's Motion for Reconsideration, filed in Georgia court on April 28, 1994, pp. 28 - 29.

U.S. Const. Amendment [V.] (double jeopardy)

Respondent's Motion for Reconsideration of May 13, 1994 Order; in Order to Consider Matters in Mitigation, filed in Georgia court on May 23, 1994, pp. 16 - 17, 27 - 29

U.S. Const. Amendment [VI.] (speedy trial)

Respondent's Motion for Reconsideration, filed in Georgia court on April 28, 1994, pp. 3, 14 - 16, and particularly, argument heading: THE COURT'S HANDLING OF RESPONDENT'S OBJECTION TO LACK OF SERVICE DEPRIVED RESPONDENT OF SIXTH AMENDMENT SPEEDY TRIAL.

Cf. Respondent's Motion to Vacate January 8, 1993 Order and to Remand for *De Novo* Proceeding before State Bar of Georgia, pp. 1: Therefore, said order [of January 8, 1993] and proceedings should be vacated and the matter remanded to the State Bar of Georgia for *de novo* proceedings and an opportunity for respondent to respond therein.

U.S. Const. Amendment [VI.] (public trial)

Respondent's Motion for Reconsideration, filed in Georgia court on April 28, 1994, pp. 25 - 26, particularly, "Being adjudicated of disbarment . . . at a secret, nonpublic hearing of which respondent neither had notice or a right to attend *** ", p. 25, and citation to *In re Oliver*, 333 U.S. 257 (1967), on p. 26.

U.S. Const. Amendment [VI, VII] (impartial jury)

Respondent's Motion for Reconsideration, pp. 30 - 31, particularly, the argument heading: Right to and Demand for Jury Trial, Confrontation of Witnesses Under Sixth, Fifth, Seventh, Fourteenth Amendments.

U.S. Const. Amendment [VIII.] (cruel and unusual punishment)

Brief of Respondent, filed Sept. 23, 1993, p. 16: "Another constitutional source for invalidating vague statutes like 4-208.2(c) is the prohibition of 'cruel and unusual punishments' in ... the Eighth Amendment of United States Constitution." p. 18: "A similar analysis would invalidate nearly identical provisions in Rule 4-204.2 pertaining to notice of investigation .... Moreover, an analysis under the Due Process and Cruel and Unusual Punishments clauses of both [U.S. and Georgia] constitutions would invalidate the notice of discipline provision."

Respondent's Supplemental Brief to Call Attention to Recent United States Supreme Court Decisions that Suggest Fourth and Eighth Amendment Violations by State Bar, as Embodied in January 8, 1993 Order, filed in the Georgia court on January 3, 1994, pp. 1, 7-8.

Respondent's Motion for Reconsideration, filed in the Georgia court on April 28, 1994, pp. 3, 20 - 22.

Respondent's Motion for Reconsideration of May 13, 1994 Order; in Order to Consider Matters in Mitigation, filed in Georgia court on May 23, 1994, pp. 4 - 5.

U.S. Const. Amendment [VIII.] (excessive fines)

Respondent's Supplemental Brief to Call Attention to Recent United States Supreme

Court Decisions that Suggest Fourth and Eighth Amendment Violations by State Bar, as Embodied in January 8, 1993 Order, filed in Georgia court on January 3, 1994, pp. 8-9.

U.S. Const. Amendment XIV (equal protection of the laws)

Brief of Respondent in Support of Recommendations that Respondent Was Not Afforded Due Process of Law, filed Sept. 23, 1993, p. 17: "In the first place, the prosecutor, Assistant General Counsel Jeffrey R. Davis admitted in the Robinson hearing that he utilized certified mail for lawyers Robert Garcia and Walter Chew, but not for Willie E. Robinson and respondent Bishop. [cit. omitted] While this also proves a violation of the Equal Protection clauses of the [Georgia constitution] and the Fourteenth Amendment of the United States Constitution. "

Respondent's Motion for Reconsideration, filed in the Georgia court on April 28, 1994, pp. 22 - 25.

U.S. Const. Amendment XIV (due process of law; lack of service)

Respondent's Motion to Vacate January 8, 1993 Order and to Remand for *De Novo* Proceeding Before the State Bar of Georgia, filed in Georgia Supreme Court on January 22, 1993, p. 1 *et seq.*

Petitioner cited the Due Process Clause at the hearing before the Special Master on May 20, 1993, as reflected in the

following pages of the transcript: 33, 77, 223, 314, 327, 328, 339, 351, 357.

Note that the Georgia Supreme Court cited to the Due Process Clause of the 14th amendment in the Apr. 18, 1994 order.

U.S. Const. Amendment XIV (due process of law; improper rulemaking)

Motion for Reconsideration, Apr. 18, 1994, pp. 6-14, 27; Motion for Reconsideration, May 13, 1994, pp. 19-27.

U.S. Const. Amendment XIV (due process of law; failure to use beyond-reasonable-doubt standard of burden of proof)

Motion for Reconsideration, Apr. 18, 1994, pp. 16-20.

U.S. Const. Amendment XIV (due process of law; abrupt departure from state precedent)

Motion for Reconsideration, Apr. 28, 1994, p. 26.

Sherman Act, Sec. 1

Brief of Respondent, filed Sept. 23, 1993, p. 28; Motion for Reconsideration, Apr. 28, 1994, pp. 29-31.

X. STATE RULES

ALABAMA

RULES OF CIVIL PROCEDURE

RULE 4.1 PROCESS: METHODS OF IN-STATE SERVICE

(a) Methods of Service. All service of process within this state shall be made as provided in this rule except when service by publication is available pursuant to Rule 4.3. Service within this state under this rule shall include delivery by a process server and service by certified mail; and each of the foregoing methods of service shall be deemed to confer *in personam* jurisdiction. Unless otherwise requested or permitted by these rules, service of process within this state shall be made by delivery by a process server.

(b) Delivery by a Process Server.

(1) *By Sheriff or Constable.* When process issued from any court subject to the provisions of these rules is to be delivered personally, the clerk of the court shall deliver or mail the process and sufficient copies of the process and complaint, or other documents to be served, to the sheriff or constable of the county in which the party to be served resides or may be found.

(2) *By Designated Person.* As an alternative to delivery by the sheriff, process issuing from any court governed by these rules may be delivered by the clerk to any person not less than eighteen years of age, who is not a party and who has been designated by order of

the court to make service of process.

(3) *How Served and Returned.* The person serving process shall locate the person to be served and shall deliver a copy of the process and accompanying documents to the person to be served. When the copy of the process has been delivered, the person serving process shall endorse that fact on the process and return it to the clerk who shall make the appropriate entry on the docket sheet of the action. The return of the person serving process in the manner described herein shall be prima facie evidence of such facts. ***

(c) Service by Certified Mail.

(1) *When Proper.* When the plaintiff files a written request with the clerk for service by certified mail, service of process shall be made by that method.

(2) *How Served.* The clerk in that event shall place a copy of the process and complaint or other document to be served in an envelope and shall address the envelope to the person to be served with instructions to forward. He shall affix adequate postage, and place the sealed envelope in the United States mail as certified mail with instructions to forward, return receipt requested, with instructions to the delivering postal employee to show to whom delivered, date of delivery and address where delivered. When the person to be served is a natural person, the clerk shall also request restricted delivery, unless otherwise ordered by the court. The clerk shall forthwith enter the fact of mailing on the docket sheet of the action and make a similar entry when the return receipt is

received by him.

(3) *When Effective.* Service by certifed mail shall be deemed complete and the time for answering shall run from the date of delivery to the named addressee or his agent as evidenced by signature on the return receipt.

MINNESOTA

RULES ON LAWYERS PROFESSIONAL RESPONSIBILITY

RULE 12. PETITION FOR DISCIPLINARY ACTION. ***

(b) Service. The Director shall cause the petition to be served upon the respondent in the same manner as a summons in a civil action. If the respondent has a duly appointed resident guardian or conservator service shall be made thereupon in like manner.

(c) Respondent Not Found.

(1) *Suspension.* If the respondent cannot be found in the state, the Director shall mail a copy of the petition to the respndent's last known address and file an affidavit of mailing with this Court. Thereafter the Director may apply to this Court for an order suspending the respondent from the practice of law. A copy of the order, when made and filed, shall be mailed to each district court judge of this state. Within one year after the order is filed, the respondent may move this Court for a vacation of the order of suspension and for leave to answer the petition for disciplianry action.

(2) *Order to Show Cause.* If the respondent does not so move, the Director

shall petition this Court for an order directing the respondent to show cause to this Court why appropriate disciplinary action should not be taken. The order to show cause shall be returnable not sooner than 20 days after service. The order may be served on the respondent by publishing it once each week for three weeks in the regular issue of a qualified newspaper published in the county in this state in which the respondent was last known to practice or reside. The service shall be deemed complete 21 days after the first publication. Personal service of the order without the state, proved by the affidavit of the person making the service, sworn to before a person authorized to administer an oath, shall have the same effect as service by publication. Proof of service shall be filed with this Court. If the respondent fails to respond to the order to show cause, this Court may proceed under Rule 15.

RULES OF CIVIL PROCEDURE

RULE 4.05. SERVICE BY MAIL

In any action service may be made by mailing a copy of the summons and of the complaint (by first-class mail, postage prepaid) to the person to be served, together with two copies of a notice and acknowledgment conforming substantially to Form 22 and a return envelope, postage prepaid, addressed to the sender. If acknowledgment of service under this rule is not received by the sender within the time defendant is required by these rules to serve an answer, service shall be ineffectual.

Unless good cause is shown for not doing so, the court shall order the payment of the costs of personal service by the person served if such person does not complete and return the notice and acknowledgment of receipt of summons within the time allowed by these rules.

MISSISSIPPI

RULES OF CIVIL PROCEDURE

RULE 4. SUMMONS ***

(c) Service:

(1) *By Process Server.* A summons and complaint shall, except as provided in subparagraphs (2) and (4) of this subdivision, be served by any person who is not a party and is not less than 18 years of age. When a summons and complaint are served by process server, an amount not exceeding that statutorily allowed to the sheriff for service of process may be taxed as recoverable costs in the action.

(2) *By Sheriff.* A summons and complaint shall, at the written request of aparty seeking service or such party's attorney, be served by the sheriff of the county in which the defendant resides or is found, in any manner prescribed by subdivion (d) of this rule. The sheriff shall mark on all summons the date of the receipt by him, and within thirty days of the date of such receipt of the summons the sheriff shall return the same to the clerk of the court from which it was issued.

(3) *By Mail.*

(A) A summons and complaint

may be served upon a defendant of any class referred to in paragraph (1) or (4) of subdivision (d) of this rule by mailing a copy of the summons and of the complaint (by first-class mail, postage prepaid) to the person to be served, together with two copies of a notice and acknowledgment conforming substantially to Form 1-B and a return envelope, postage prepaid, addressed to the sender.

(B) If no acknowledgment of service under this subdivision of this rule is received by the sender within 20 days after the date of mailing, service of such summons and complaint may be made in any other manner permitted by this rule.

(C) Unless good cause is shown for not doing so, the court shall order the payment of the costs of personal service by the person served if such person does ot complete and return within 20 days after mailng, the notice and acknowledgment of receipt of summons.
***

WEST VIRGINIA

STATE BAR CONSTITUTION, BY- LAWS

ARTICLE VI

Section 39. Service in person and substituted service.

Service of any notice or order on any accused attorney, as provided in sections twelve, fourteen, twenty and twenty-five of this article, shall be made on the accused in this State in the same manner as a summons commencing an action at law may be served and the

service shall be executed at least twenty (20) days prior to the return day thereof, unless publication is required, as herein provided, in which event the notice or order shall be returnable not less than thirty (30) days after the first publication thereof. If it be shown by affidavit that the accused attorney is not a resident of this State, or that diligence has been used by or on behalf of the committee on legal ethics or the court having jurisdiction in the premises to ascertain in what county in this State the accused is without effect, an order of publication may be entered by the committee or by the court having jurisdiction in the premises against the accused attorney, which order of publication shall be entered, conformed to, be published, and have the same force and effect as an order of publication against the defendant pursuant to the provisions of sections twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight and twenty-nine [Sections 56-3-23 to 56-3-29], article three, chapter fifty-six of the Official Code of West Virginia, one thousand nine hundered thirty-one, as amended. Personal service of any notice or order referred to herein may be made upon a nonresident accused attorney who is out of this State, which shall have the same effect, and no other, as an order of publication duly published against him, and service of such notice or order shall be made in the manner prescribed in section twenty-five [Section 56-3-25], article three, chapter fifty-six of said Official Code of West Virginia.

Code of West Virginia, Sec. 56-3-26. Rehearing in case of nonpersonal service.

Any unknown party or toher defendant who was not served with process in this State, and did not appear in the case before the date of such judgment ... may, within two years from that date ..., file his petition to have the proceedings reheard.

SOUTH CAROLINA

Code of Laws of South Carolina

Sec. 4-5-520. Additional causes of removal or suspension; hearing required

Any attorney, solicitor or counsellor may be removed or suspended who shall be guilty of any deceit, malpractice or misbehavior, but not until a copy of the charges against him shall have been delivered to him by the clerk of the court in which the proceedings shall be had and an opportunity shall have been given him of being heard in his defense.

DELAWARE

RULES OF BOARD ON PROFESSIONAL RESPONSIBILITY:

RULE 11. SERVICE

(a) Service of Petition. Service upon the respondent of the petition in any disciplinary or disability proceeding shall be made by personal service, by any person authorized by the Chairman of the Board, or by registered or certified mail at the post office address furnished pursuant to Supreme Court Rule 69.

(b) Service of Other Papers. Service of any other papers or notices required by these rules shall, unless otherwise provided by these rules, be made in accordance with the Rules of the Superior Court.

LOUISIANA

RULES for Lawyer Disciplinary Enforcement

Section 13. Service

A. Service of Petition. Service upon the respondent of the petition in any disciplinary or disability proceeding shall be made by personal service, by any person authorized by the chair of the board, or by mailing the petition by registered or certified mail to an address shown in the current information roster filed by respondent pursuant to Section 7 or other last known address.

B. Service of Other Papers. Service of any other papers or notices required by these rules may be made upon respondent or respondent's counsel and

shall, unless otherwise provided by these rules, be made in accordance with Articles 1813 and 1814 of the Louisiana Code of Civil Procedure.
[Adopted effective April 1, 1990]

MONTANA

Lawyer Disciplinary Proceedings

RULE 11. SERVICE

A. Service of Complaint. Service upon the respondent of a complaint in a formal disciplinary proceeding shall be made by personal service by any person authorized by the chairperson of the Commission, or by registered or certified mail at the last known address of the respondent, and proof thereof made as provided in Rule 4, Montana Rules of Civil Procedure.

B. Service of Other Papers. Service of any other papers or notices required by these rules shall, unless otherwise provided by these rules, be made in accordance with the Rules of Civil Procedure of the State of Montana.

TENNESSEE

SUPREME COURT RULES for Disciplinary Enforcement.

Section 12. Service

12.1 Service upon the respondent of the petition in any disciplinary proceeding shall be made by personal service, by any person authorized by the Chairman of the Board, or by registered or certified mail at the address shown in the most recent registration statement

filed by respondent pursuant to Section 20.5 or other last known address.

12.2 Service of any other papers or notices required by these Rules shall, unless otherwise provided by these Rules, be made in accordance with Rule 5.02, Tennessee Rules of Civil Procedure.

UTAH

Procedures of Discipline of the Utah State Bar

Bar Rule XI(b): Service shall be made personally upon the attorney in question or by registered or certified mail to the last known address as shown by the official roster of the attorneys of the Bar.

KANSAS

RULES enacted by the Supreme Court of Kansas, 1991 edition, August 31, 1991

Rule 215 SERVICE

(a) Service upon the respondent of the formal complaint in any disciplinary proceeding shall be made by the Disciplinary Administrator, either by personal service or by certified mail to the address shown on the attorney's most recent registration, or at his or her last known office address.

(b) Service of any other papers or notices required by these Rules may, unless otherwise provided, be made in accordance with K.S.A. 60-205.

(c) Service by mailing under subsection (a) or (b) shall be deemed complete upon mailing whether or not the

same is actually received.

NEVADA

COURT RULES

Rule 109. Service.

1. Complaint. Service of a complaint under these rules shall be made by personal service by any person authorized by the chairman of the disciplinary board, or by registered or certified mail at the current address shown in the state bar's records or other last known address.

2. Other papers. Service of other papers or notices required by these rules shall be made in accordance with Rule 5 of the Nevada Rules of Civil Procedure, unless otherwise provided by these rules.

DISTRICT OF COLUMBIA

D.C. RULES ANNOTATED

Rule XI. Disciplinary proceedings.

**** Section 8. Investigations and hearings*

*** (c) *Petitions.* Formal disciplinary proceedings before a Hearing Committee shall be instituted by Bar Counsel by the filing of a petition under oath with the Executive Attorney. A copy of the petition shall be served upon the attorney, and another copy shall be sent to the Clerk of the Court. ***

(d) *Notice of Hearing.* *** Service shall be made in accordance with section 19(e) of this rule. ***

Section 19. Miscellaneous matters.

*** (e) *Service.* Service upon the attorney of a petition instituting formal disciplinary proceedings shall be made by personal service by any person authorized by the Chairperson of the Board, or by registered or certified mail, return receipt requested, to the address shown in the most recent registration statement filed by the attorney pursuant to Rule II, or other last known address. Service by registered or certified mail shall not be effective unless Bar counsel files in the record of the proceeding proof of receipt of the petition by the attorney. Service of any other paper or notice required by this rule shall, unless otherwise provided in this rule, be made in accordance with Superior Court Civil Rule 5.

Rules of Board of Governors

Chapter 7. Initiation of Formal Proceedings Before a Hearing Committee

*** 7.2 Service of a Petition Upon Respondent

Promptly after the contact member approves a petition, Bar Counsel shall file the petition with the Board Office (with a copy to the Clerk of the Court) and serve a copy thereof upon the respondent named therein. Service shall be made as follows:

(1) by delivering a copy of the petition to respondent personally; or

(2) by mailing a copy of the petition by registered or certified mail, return receipt requested, to the respondent..

The person serving the petition shall file proof of service thereof with the Board Office showing receipt of the petition by the respondent. If service of the petition is made by certified or registered mail, such proof shall include a return receipt or other acknowledgment received by Bar Counsel and relecting delivery to respondent. The Board Office shall include such proof of service as part of the official record of proceedings.

In the event Bar Counsel is unable to effect service of the petition on respondent in the manner provided for in this Rule within thirty (30) days after filing the petition, Bar Counsel shall then promptly provide written notice to the D.C. Court of Appeals which shall: (1) state that personal service of the petition cannot be had; (2) specify how such service has been attempted; and (3) seek the Court's direction pursuant to D.C. Code Section 11-2503(b) regarding how to proceed. Upon receipt of direction from the Court, Bar Counsel shall promptly comply with such direction. Until Bar Counsel receives direction from the Court, Bar Counsel shall continue to attempt to effect service on the respondent in the manner provided in this Rule.

IOWA

Rules of Procedure of the Committee on Professional Ethics and Conduct of the Iowa Bar Association.

3.2. The committee shall forward to the respondent by restricted certified

mail, marked "Confidential", or by personal service in the manner of an original notice in civil suits, a copy of the complaint, requesting a written response thereto, and copies of the committee rules and of supreme court rule 118.

3.3. If after twenty days, no such response has been received, the respondent shall be notified by restricted certified mail that unless a response is made within ten days from receipt of notice, the committee may file a complaint with the Grievance Commission for failure to respond, and concerning all or any portion of the matter about which trhe original complaint was made.

RULES OF THE GRIEVANCE COMMISSION OF THE SUPREME COURT OF IOWA

6. Upon the filing of such complaint, the secretary shall also cause a written notice thereof with a copy of said complaint, a copy of court rule 118, and a copy of these rules attached to be served upon the respondent by personal service in the manner of an original notice in civil suits or by restricted certified mail. The notice shall also notify said respondent to file a written answer to the complaint, within fifteen days after completed service of the notice. Written return of service shall be made by the person making the service if by personal service or by the secretary with postal receipts attached if by restricted certified mail, and such return of service shall be filed in the cause. Service shall be deemed complete

on the date of personal service or date shown by the postal receipt of delivery of said notice to the respondent or refusal of the respondent to accept delivery. The notice shall be deemed sufficient if substantially in the form set out in Appendix "A", made a part hereof.

MAINE

Maine Manual on Professional Responsibility

Rule 7.1 * (e) Public Disciplinary Proceedings before a Grievance Commission Panel.**

(1) Petition; Service and Answer. Bar Counsel shall commence public disciplinary proceedings by filing a petition for disciplinary action before a panel of the Grievance Commission selected as provided in Rule 7(b)(2). The petition shall set forth specific charges of alleged misconduct. A copy of the petition, together with a notice setting a time for answer that shall be not less than 20 days after service, shall be served by Bar Counsel upon the respondent attorney either by registered or certified mail, with restricted delivery and return receipt requested, ro by any method provided in Rule 4 of the Maine Rules of Civil Procedure. The respondent attorney shall file an answer within the stated time. In the event that the respondent attorney fails to file an answer, the facts set forth and the misconduct alleged in the petition shall be taken as admitted, but the

respondent attorney may be heard on the question of sanctions.

(2) *Hearing.*

(A) The disciplinary panel shall hold a hearing on the petition. Bar Counsel shall serve notice of the time and place of hearing on the respondent attorney and the complainant either by registered mail or by registered or certified mail, with restricted delivery and return receipt requested, at least 15 days in advance of the date thereof.

PENNSYLVANIA

RULES of the Disciplinary Board of the Supreme Court of Pennsylvania

SERVICE OF DOCUMENTS

Section 89.21. Service by the Board.

Orders, notices and other documents originating with the Board, including all forms of Board action, petitions and similar process, and other documents designated by the Board for this prupose, shall be served by the Office of the Secretary by mail, except when service by another method shall be specifically required by these rules, by mailing a copy thereof to the person to be served, addressed to the person designated in the initial pleading or submittal at the address of record of such person. When service is not accomplished by mail, personal service may be effected by any one duly authorized by the Office of the Secretary in the manner provided in Pa. R. Civ. P. No. 1504 (relating to service of process in actions in equity).

RHODE ISLAND

RULES OF PROCEDURE of the Disciplinary Board

2.8. Service by the Board. - Orders, notices and other documents originating with the Board, including all forms of Board action, petitions and similar process, and other documents designated by the Board for this purpose, shall be signed by the Chairperson or Vice-Chairperson and served by the Board by mail, except when service by another method shall be specifically required by these rules, by mailing a copy thereof to the person to be served, addressed to the person or persons designated in the initial pleading or submittal at his or hers or its address of record.

2.17. Service of Petition on Respondent. - A copy of the petition shall be served upon the respondent, together with a notice from the Board setting a time for answer. (Article III, Rule 6(b) of the Supreme Court). This service shall be made by Disciplinary Counsel.

TEXAS

State Bar of Texas Disciplinary Rules of Professional Conduct and Rules of Disciplinary Procedure

2.16 Evidentiary Hearings: *** Proceedings before an evidentiary panel of the Committee include:

A. Service upon the Respondent of a written statement of the specific charge

or charges against the Respondent, together with a copy of the Complaint. The charge shall be formulated by the evidentiary panel on the basis of the findings of the investigatory panel. The notification shall be given by the Chief Disciplinary Counsel and shall be served by U.S. certified mail, return receipt requested, upon the Respondent or upon his or her attorney, if an attorney has entered an appearance before the Committee on behalf of the Respondent, or by any other means of service permitted by the Texas Rules of Civil Procedure.
***

ARIZONA

DISCIPLINE AND DISABILITY PROCEEDINGS

RULE 55. RULES OF PROCEDURE

(b) Service. Unless otherwise provided, papers shall be served in the following manner:

1. *Personal Service.* Papers may be served personally by any person over the age of majority except the complainant, respondent, respondent's counsel or bar counsel. The affidavit of the person making service shall be prima facie proof thereof and shall be filed in the proceedings.

2. *Service by Mail.* Rules 5(c), 6(a) and 6(e) of the rules of civil procedure shall apply in discipline proceedings.

3. *Service of Complaint.* A complaint shall be served personally upon respondent.

4. *Service After Complaint.* Upon

and after filing of a complaint, the party filing shall serve one copy of every document filed on bar counsel, respondent, respondent's counsel, the hearing officer or each member of the committee as to matters pending before the hearing officer or the committee, and the chairman of the commission as to matters pending before it. The clerk may furnish a copy of any document to bar counsel upon counsel's request. The record shall be made available for inspection and copying by respondent. ***

6. *Service on the Respondent.* Documents shall be addressed to respondent according to the membership records of the state bar, unless and until respondent shall advise membership records of a different address. The clerk of the court is designated the agent for service of the complaint and all other filings as to a respondent who has been absent from the State of Arizona for a continuous period of more than thirty days, or who cannot otherwise be found and personally served in this state. If if appears to the satisfaction of the panel, the committee or hearing officer, the commission or the court, that respondent cannot be personally served in this state, service may be made by serving two copies of the complaint or other filing on the clerk of the court. The clerk shall immediately send, by registered or certified mail, one copy of th complaint or other filing to respondent at his last known address shown by the membership records of the state bar.

HAWAII

RULES OF THE SUPREME COURT OF HAWAII

2.11. Service.

(a) Service upon the respondent of the petition or order to show cause in any disciplinary, disability, or trustee proceeding shall be made by personal service by any person authorized by the Chairperson or the Board, except that in the event the respondent cannot be found within the state or has departed therefrom, service shall be made by registered or certified mail at the respondent's address shown in his or her registration statement filed pursuant to Rule 17(d) or other last known address.

(b) Service of any other papers or notices required by these rules shall be made in accordance with Rule 5 of the Hawaii Rules of Civil Procedure.

ILLINOIS

ART. IV. THE HEARING BOARD

RULE 214 - Service of Complaint. The Clerk shall cause a copy of the complaint, a copy of these rules and a notice of the hearing to be served on the respondent within or without the State of Illinois as follows:

(a) **By Personal Service.** Personal service shall be made by leaving a copy with the respondent personally; or

(b) **By Mail Service.** If a person authorized to make personal service, as provided in Rule 215 below, files with the Hearing Board his affidavit that the respondent (1) resides out of the state,

(2) has left the state, (3) on due inquiry cannot be found, or (4) is concealed within the state so that process cannot be served upon him, the Administrator shall serve the respondent by ordinary mail, postage fully prepaid, directed to the respondent at the address shown on the Master Roll or if he is not listed on the Master Roll at his last known business or residence address. The Administrator's certificate of mailing is sufficient proof of service.

NEW YORK

APPELLATE DIVISION

ART. , SECTION 90.

6. Before an attorney or counsellor-at-law is suspended or removed as prescribed in this section, a copy of the charges against him must be delivered to hinm personally within or without the state or, in case it is established to the satisfaction of the presiding justice of the appellate division of the supreme court to which the charges have been presented, that he cannot with due diligence be served personally, the same may be served upon him by mail, publication or otherwise as the said presiding justice may direct, and he must be allowed an opportunity of being heard in his defense. In all cases where the charges are served in any manner other than personally, and the attorney and counsellor-at-law so served does not appear, an application may be made by such attorney or in his behalf to the presiding justice of the appellate

division of the supreme court to whom the charges were presented at any time within one year after the rendition of the judgment, or final order of suspension or removal, and upon good cuase shown and upon such terms as may be deemed just by such presiding justice, such attorney and counsellor-at-law must be allowed to defend himself against such charges. ***

WISCONSIN

SUPREME COURT RULES

SCR 22.11 Service, filing. (1) The complaint and the order to answer shall be served upon the respondent in the same manner as a summons as provided in section 801.11(1) of the statutes. If, with reasonable diligence, the respondent cannot be served under section 801.11(1)(a) or (b) of the statutes, service may be made by sending by certified mail an authenticated copy of the complaint and order to answer to the last address furnished by the respondent to the state bar.

(2) The filing of a name and address by an attorney with the state bar constitutes a consent to service by certified mail at that address.

(3) Service of other pleadings and papers must be in the same manner as provided in the rules of civil procedure.

(4) Upon receipt of the proof of service of the complaint, the chief justice shall appoint a referee as provided in SCR 21.09(4). ***

Wisconsin Statutes 91-92

801.11. Personal Jurisdiction, manner of serving summons for. A court of this state having jurisdiction of the subject matter and grounds for personal jurisdiction as provided in [Section] 801.05 may exercise personal jurisdiction over a defendant by service of a summons as follows:

(1) NATURAL PERSON. Except as provided in sub. (2) upon a natural person:

(a) By personally serving the summons upon the defendant either within or without this state.

(b) If with reasonable diligence the defendant cannot be served under par. (a), then by leaving a copy of the summons at the defendant's usual place of abode:

1. In the presence of some competent member of the family at least 14 years of age, who shall be informed of the contents thereof; or

2. Pursuant to the law for the substituted service of summons or like process upon defendants in actions brought in courts of general jurisdiction of the stae in which service is made.

OHIO

RULES FOR THE GOVERNMENT OF THE BAR OF OHIO

SECTION 6. Proceedings of the Board after Filing of the Complaint. ***

(E) *Notice to Respondent upon Filing of the Complaint.* The Secretary of the

Board shall send a copy of the complaint by certified mail to the respondent with a notice requiring the respondent to file, within twenty days after the mailing of the notice, six copies of his or her answer and serve copies of the answer on counsel of record named in the complaint. Extensions of time for the filing of the answer may be granted by the Secretary for good cause shown.
(F) *Default*. If the respondent has not filed an answer within twenty days of the answer date set forth in the notice to respondent of the filing of the complaint or any extension of the answer date, the relator shall file a motion for default. Prior to filing a motion for default, relator shall make reasonable efforts to contact the respondent. ***

SECTION 8. Review by Supreme Court; Orders; Costs; Publication; Duties of Disqualified or Resigned Attorney.
(A) Show Cause Order. After the filing of a final report of the Board, the Supreme Court shall issue the respondent an order to show cause why the report of the Board shall not be confirmed and a disciplinary order entered. Notice of the order to show cause shall be served by the Clerk of the Supreme Court on the respondent and all counsel of record personally or by certified mail.

FLORIDA

RULES OF THE FLORIDA BAR

3-7.11 General rules of procedure.
***
(b) Process. Every member of The

Florida Bar is charged with notifying The Florida Bar of a change of mailing address or military status. Mailing of registered or certified mail papers or notices prescribed in these rules to the last mailing address of an attorney as shown by the official records in the office of the executive director of The Florida Bar shall be sufficient notice and service unless this Court shall direct otherwise. ***

(c) **Notice in lieu of process.** Every member of The Florida Bar is within the jurisdiction of the Supreme Court of Florida and its agencies under these rules, and service of process is not required to obtain jurisdiction over respondents in disciplinary proceedings; but due process requires the giving of reasonable notice and such shall be effective by the service of the complaint upon the respondent by mailing a copy thereof by registered or certified mail return receipt requested to the last-known address of the respondent according to the records of The Florida Bar or such later address as may be known to the person effecting the service.

ARKANSAS

COURT RULES

SECTION 5. PROCEDURE

A. GENERAL. The Committee shall investigate and adjudicate all complaints alleging violation of the Model Rules that may be brought to its attention in the form of an affidavit, or in respect of which amy member of the Committee may

have information, and shall give the attorney involved an opportunity to explain or refute the charge. ***
B. NOTICE OF ATTORNEY. At the direction of the Committee or upon a determination by the Executive Director that a complaint should be processed as a formal complaint, the Executive Director shall:

(1) Furnish to the attorney complained against a copy of the formal complaint and advise the attorney that he may file a written response in affidavit form with any supporting ebvidence desired. The attorney's mailing address on record with the Clerk shall constitute the address for service. Certified mailing of the formal complaint to said address shall be deemed service on the attorney. ***

NEW HAMPSHIRE

SUPREME COURT RULES

RULE 37 *

(13) *Procedure:*

(a) Discipline proceedings shall be initiated in this court by the committee or by the attorney general by written complaint setting forth allegations of facts giving rise to the complaint and alleging the specific provisions of the Rules of Professional Conduct which have been violated.

(b) Service shall be made on the respondent-attorney in such manner as the court may direct.

VIRGINIA

RULES FOR THE ORGANIZATION AND GOVERNMENT OF THE VIRGINIA STATE BAR

***** 3. CLASSES OF MEMBERSHIP. - *****

(a) Active Members - *** Each active member shall file with the secretary of the Virginia State Bar a statement setting forth his or her business and residence address and the judicial circuit in this State in which his or her membership mailing address is maintained. The membership mailing address may be either the member's business address or residence address at the option of the member, but the chosen address will be used for the purpose of determining the judicial circuit in which the member is entitled to vote and for all other purposes related to membership in the Virginia State Bar. A member shall notify the secretary in writing of any change in address.

***** 13. ***** (k) ******* (7) Notice: Whenever any notice or other writing directed to the Respondent is required or permitted under this Rule, such notice or other writing shall be demed effective and served when mailed by certified or registered mail, return receipt requested, to the Respondent at the Respondent's address on record for licensing purposes with the Bar.

IDAHO

RULE of Professional Conduct Board

RULE 523 Service.

(a) Complaints and Petitions. Service of complaints and petitions under these Rules shall be made by certified mail, return receipt requested, to the lawyer's address as filed with the Idaho State Bar. In the event service cannot be made upon a lawyer, either becuase the address on file with the Idaho State Bar is no longer effective or because the lawyer fails or refuses to accept delivery of mail at that address, service will be deemed complete fourteen (14) days after reasonable notice by publication in *The Advocate*.

NEBRASKA

DISCIPLINARY RULES

RULE 10. PROCEDURE

Nebraska Supreme Court

***

(G) Service upon the Respondent may be had by serving upon him a copy of the Formal Charge or any amended Formal Charge and notice of the time for answer in the same manner as service of summons is had in civil proceedings in the District Courts of the State, in which case it shall be proved by the official return of the officer making such service. Service shall be deemed to have been waived if the Respondent shall sign a written receipt for a coy of the Formal Charge and notice. Service may likewise be had by the mailing by the Clerk of a certified copy of said Formal Charge and notice by certified mail, return receipt

requested, to the Respondent at his last known address; and in that event the official return card of the United States mail, signed by the Respondent, acknowledging receipt of the envelope containing the copy of said Formal Charge and notice, shall be deemed sufficient proof of service. In the event that it shall appear by affidavit that personal service cannot be had upon the Respondent and that letters to the Respondent's last known address are return unclaimed, service may be had upon the Respondent by publication of notice for two successive weeks in some legal newspaper published in the county wherein the Respondent last resided. Such notice shall state that Formal Charge for disciplinary action has been filed in the Court against the Respondent and shall give the date of filing and the time within which Respondent is required to answer.

OREGON

STATE BAR RULES OF PROCEDURE

BR 4.2. SERVICE OF FORMAL COMPLAINT

(a) Manner of Service of Formal Complaint. A copy of the formal complaint, accompanied by a notice to answer it within 14 days, may be personally served on the accused, his or her in state agent or as otherwise permitted by BR 1.12. The notice to answer shall be in substantially the form set forth in BR 12.3.

(b) Alternative Service of Formal Complaint. The Bar may request the Supreme Court to authorize the service of

a formal complaint and notice to answer on an accused pursuant to ORCP 7D(6).

OREGON RULES OF CIVIL PROCEDURE

RULE 7

D(6) *Court Order for Service; Service by Publication.*

D(6)(a) Court Order for Service by Other Method. On motion upon a showing by affidavit that service cannot be made by any method otherwise specified in these rules or other rules or statute, the court, at its discretion, may order service by any method or combination of methods which under the circumstances is most reasonably calculated to apprise the defendant of the existence and pendency of the action, including but not limited to: publication of summons; mailing without publication to a specified post office address of defendant, return receipt requested, deliver to addressee only; or posting at specified locations. If service is ordered by any manner other than publication, the court may order a time for response. ***

D(6)(c) Where Published. An order for publication shall direct publication to be made in a newspaper of general circulation in the county where the action is commenced or, if there is no such newspaper, then in a newspaper to be designated as most likely to give notice to the person to be served. Such publication shall be four times in successive calendar weeks.

D(6)(d) Mailing Summons and Complaint. If service by publication is ordered and defendantn's post office

address is known or can with reasonable diligence be ascertained, the plaintiff shall mail a copy of the summons and complaint to the defendant. When the address of any defendant is not known or cannot be ascertained upon diligent inquiry, a copy of the summons and complaint shall be mailed to the defendant at defendant's last known address. If plaintiff does not know and cannot ascertain, upon diligent inquiry, the present or last known address of the defendant, mailing a copy of the summons and complaint is not required. ***

D(6)(f) Defending Before or After Judgment. A defendant against whom publication is ordered or such defendant's representatives, on application and sufficient cause shown, at any time before judgment, shall be allowed to defend the action. A defendant against whom publication is ordered or such defendant's representatives may, upon good cause shown and upon such terms as may be proper, be allowed to defend after judgment and within one year after entry of judgment. If the defense is successful, and the judgment or any part thereof has been collected or otherwise enforced, restitution may be ordered by the court, but the title to propery sold upon execution issued on such judgment, to a purchaser in good faith, shall not be affected thereby.

IX. MODEL SERVICE OF PROCESS RULES IN ATTORNEY DISCIPLINARY MATTERS

A. Model Rules for Lawyer Disciplinary Enforcement (adopted by American Bar

Association House of Delegates in August, 1989), *BNA Lawyers' Manual on Professional Conduct*, August 30, 1989.

RULE 13. SERVICE.

A. Service of Petition. Service upon the respondent of the petition in any disciplinary or disability proceeding shall be made by personal service, by any person authorized by the chair of the board, or by registered or certified mail at an address shown in the current information roster filed by respondent pursuant to Rule 7 or other last known address.

B. Service of Other Papers. Service of any other papers or notices required by these rules may be made upon respondent or respondent's counsel and shall, unless otherwise provided by these rules, be made in accordance with Rule ___ of the [state rules of civil procedure].

B. Model Federal Rules of Disciplinary Enforcement (approved by the American Bar Association House of Delegates in February, 1978), *BNA Lawyers' Manual on Professional Conduct*, Aug. 30, 1989.

Rule IX. Service of Papers and Other Notices.

Service of an order to show cause instituting a formal disciplinary proceeding shall be made by personal service or by registered or certified mail addressed to the respondent attorney at the address shown in the most recent registration filed pursuant to Rule X(F) hereof. Service of any other papers or notices required by these Rules shall be

deemed to have been made if such paper or notice is addressed to the respondent attorney at the address shown on the most recent registration statement filed pursuant to Rule X(F) hereof, or to counsel or the respondent's attorney at the address indicated in the most recent pleading or other document filed by them in the course of any proceeding.

XII. U.S. COURT OF APPEALS FOR THE ELEVENTH CIRCUIT, ADDENDUM EIGHT (October, 1992), RULES GOVERNING ATTORNEY DISCIPLINE (Looseleaf distribution by the court).

RULE 12. Service of Papers and Other Notices.

Service of an order to show cause instituting a formal disciplinary proceeding shall be made by personal service or by registered or certified mail addressed to the attorney at the address shown on the roll of attorneys admitted to practice before the Court. Service of any other paper or notice required by these rules shall be deemed to have been made if such paper or notice is mailed by first-class mail to the attorney at the address shown on the roll of attorneys admitted to practice before the Court, or to the attorney's counsel at the address indicated in the most recent pleading or document filed by such counsel in the course of any proceeding pursuant to these rules.

XIII. AFFIDAVITS FROM THE RECORD

Annie Smith's affidavit

[Caption omitted]

COUNTY OF FULTON
STATE OF GEORGIA

PERSONALLY APPEARED before the undersigned attesting officer, ANNIE SMITH, who after first being duly sworn, hereby deposes and says on oath, as follows:

1. My name is Annie Smith. I am of legal age and competent to give this affidavit. I have personal and first-hand knowledge of the facts stated herein, and same are true and correct.***

3. I was assigned to the U.S. Post Office at 575 Pharr Road, Atlanta, Georgia 30355 (Northside Post Office) from September, 1991, to January, 1993. I served as Window Supervisor from September, 1991, to January, 1993. On July 3, 1992, unlike most other days, I undertook the duty to log in registered mail, to tear slips off said registered mail for insertion in post office boxes, and to insert said slips in said boxes. I also had other responsibilities.

4. However, at this point, seven (7) months after a registered letter was redirected into the Northside Post Office from the State Bar of Georgia to W. Kent Bishop, I cannot recall the exact letter or the exact slip I would have used. I always strive to do my job according to postal regulations, and I believe I do my job according thereto. ***

7. I had no further contact to the piece of mail from the State Bar of Georgia to Mr. Bishop after July 3, 1992. Further affiant sayeth naught.

/s/ Annie Smith

[Jurat dated February 4, 1993 omitted]

Alan Richard Giles' affidavit

[Caption omitted]

STATE OF GEORGIA
COUNTY OF FULTON

PERSONALLY APPEARED before the undersigned authority duly authorized to administer oaths, ALAN RICHARD GILES, who being duly sworn hereby deposes and says, as follows:

1. My name is Alan Richard Giles. I am of legal age and competent to give this affidavit. I have personal knowledge of the facts stated herein.

2. I am an employee of the United States Postal System (USPS) and hold the position of Manager of the Postal Business Center at 1605 Boggs Road, Duluth, Georgia 30159.

3. The USPS has employed PS Form 3849, Oct. 1980 issue date for a number of years. On the left side of the form is a "Claim Check" number below which is "Date" and a line and the words, "1st notice" and "2nd notice" and "Returned". On the right hand side of the form is Delivery Notice, Reminder, and Receipt for completion by a postal employee and insertion in a mailbox or post office box. The PS Form 3849 printed in October, 1980 is pink.

4. The USPS totally revamped PS Form 3849, entitled "Delivery Notice/Reminder/Receipt", in 1992, and the revamped form was sent to the printer in July, 1992. The form printed is colored yellow and is bigger than the October, 1980 edition.

5. The USPS maintains a Materials

Distribution Center in New Jersey at which USPS forms are warehoused and distributed to the some 40,000 USPS outlets in the United States. In the ordinary course of business, this center maintains an "Inventory Control DOS Program". A record entered in said program in the ordinary course of business shows that the first shipment of printed, yellow PS Form 3849, July, 1992 to any of the 40,000 USPS outlets did not occur prior to November 1, 1992.

6. The delay from the date the yellow form was sent to the printer (July, 1992) to the date it was first distributed from the New Jersey center (November, 1992) is not unusual considering the large number of forms to be printed and the sheer logistical problem of mailing them out.

7. Until their old stock of pink PS Form 3849 is used up, it is not uncommon for USPS outlets to continue using their pink 3849's until exhausted, even though their yellow PS Form 3949 are in the post office.

/s/ Alan Richard Giles
ALAN RICHARD GILES

[Jurat dated June 8, 1993 omitted]

James E. Spence, Jr.'s expert affidavit

[Caption omitted]

STATE OF GEORGIA
COUNTY OF FULTON

PERSONALLY APPEARED before the undersigned authority, duly authorized to administer oaths, JAMES E. SPENCE, JR., who being duly sworn, hereby deposes and says, as follows:

1. My name is James E. Spence, Jr. I am of legal age and competent to give this affidavit. It is based on first-hand and personal knowledge.

2. I am a member of the State Bar of Georgia. I am engaged in the private practice of law in Decatur, Georgia. I am a former Assistant General Counsel of the State Bar of Georgia. While in that position, I represented the State Bar of Georgia in the Supreme Court of Georgia in connection with disciplinary proceedings against attorneys. Since I began my private law practice, I have represented attorneys in the Supreme Court of Georgia in connection with disciplinary proceedings against them brought by the State Bar.

3. At the request of Winford Kent Bishop, I reviewed the grievance filed against him by Eugene Burke Phillips in July, 1991, and the grievance filed against him by Randy Joan Comins, a member of the State Bar of Georgia, in May, 1991. I have also reviewed the answer to Ms. Comins' grievance filed by Mr. Bishop with the State Bar of Georgia in July, 1991, as well as his answer to

Mr. Phillips' grievance filed with the State Bar in October, 1991.

4. Based upon my review and my knowledge of the Standards of Conduct of the State Bar of Georgia, as disclosed in the decisions of the Supreme Court of Georgia, Mr. Bishop offers, in my professional opinion, an issuable defense to each and every charge made by Mr. Phillips and Ms. Comins. Moreover, in the few instances when a credibility decision must be made between conflicting evidence, I have accepted Mr. Bishop's version rather than the complainants'; and based upon such credibility decision, I have found no violation of the Standards of Conduct of the State Bar of Georgia.

5. I have not based my opinion upon the determinations of the fee arbitrators of July 12, 1991, that Mr. Bishop was not required to return any monies to Mr. Phillips and of August 27, 1991, that his fees were reasonable. However, such determinations confirm my opinion that Mr. Bishop performed properly in the circumstances.

/s/ James E. Spence, Jr.
JAMES E. SPENCE, JR.

[Jurat sworn May 23, 1994 omitted]

Dawson County Deputy Sheriff's Affidavit

[Caption omitted]

State of Georgia
County of Lumpkin

Personally appeared before the undersigned authority duly authorized to administer oaths JERRI COFIELD who, being duly sworn, hereby deposes and says, as follows:

1. My name is Jerri Cofield. I am of legal age and competent to give this affidavit. I have first-hand and personal knowledge of the facts stated herein, and they are ture and correct.

2. In 1991, 1992 I was employed as a deputy sheriff by the Dawson County Sheriff's Department. During those years a part of my regular duties was to serve process upon persons to be found in Dawon County, Georgia.

3. In the course of my regular duties as a Dawson County Deputy Sheriff, I learned in 1991 that W. Kent Bishop was the son of Winford R. Bishop who lived with his wife on Steve Tate Hwy. and that Kent lived with his parents in their house. The senior Mr. Bishop verbally confirmed this to me.

4. If, in 1992, a summons or other legal document should have been received by the Dawson County Sheriff's Dept to be served on "W. Kent Bishop, Dawson County, Georgia", I would have known that his person was the son of Winford Bishop who lived on Stebve Tate Hwy. and I would have driven to the location and served wither W. Kent Bishop or one of his parents if a t home when I arrived. If

not at home, I would have returned until service was effectuated.

5. Thus, I knew for a number of years that W. Kent Bishop lived in Dawson County, and a summons or other legal document directed to "W. Kent Bishop, Dawson County, Georgia" would have been served on him or his parent.

6. I know the elder Winford Bishop personally and attended him when he injured his hand leading his horse.

/s/ Jerri Cofield
JERRI COFIELD

[Jurat dated June 27, 1994 omitted]

USPS letter carrier's affidavit

[Caption omitted]

State of Georgia
County of Dawson

Personally appeared before me the undersigned authority duly authorized to administer oaths ROGER PADGETT who, being duly sworn, hereby deposes and says, as follows:

1. My name is Roger Padgett. I am of legal age and competent to give this affidavit. I have first-hand and personal knowledge of the facts stated herein, and they are true and correct.

2. I am employee of the U.S. Postal Service and have been since 19. I serve as a letter carrier for a route known as "Star Route" on which is located Steve Tate Highway, in Dawson County, Ga. Six days a week I arrive at the only post office in Dawson County which is located in Dawsonville early in the morning to sort U.S. mail & arrange it to be delivered by me. As I go through the mail, the other carriers are within talking distance. If any one of us comes across a piece of mail without a box, route, or street address, he or she calls out the name of the addressee, and if another one of us recognizes the name, he or she will take the mailpiece and deliver it.

3. In 1991 an elderly man named Winford R. Bishop lived with his wife on Steve Tate Hwy, at Box 189, Star Rte. I began receiving mail addressed to "W. Kent Bishop". I inquired of the elder Mr. Bishop, and he said that person was

his son. Thereafter, I delivered such addressed mail to Box 189. Also, certified mail came in addressed to W. Kent Bishop.

4. If, in January or July, 1992, a piece of mail, regular or certified or registered, addressed "W. Kent Bishop, Dawson County, Ga." (and there is only one zip code for the entire county), I would have gotten it. I would have then delivered it to Box 189, Star Route, which is the elder Winford Bishop's address.

5. Thus, I have known for a number of years that W. Kent Bishop lived in Dawson County, and a piece of mail addressed to "W. Kent Bishop, Dawson County, Georgia" would have been delivered to him, if regular mail, and certified, or registered mail, would have resulted in a PS Form 3849 slip being left at Winford Bishop's residence.

/s/ Roger Padgett
ROGER PADGETT

[Jurat dated June 25, 1994 omitted.]